

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2016-CP-40-07109
Appellate Case No. 2018-002054

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SC Court of Appeals

Richard A. Finan, ...Appellant,

v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia, ...Respondent.

MEMORANDUM ON THE ISSUE OF APPEALABILITY

On November 16, 2018, Richard A. Finan (“Mr. Finan”) timely filed and served his Notice of Appeal regarding the orders dated September 7, 2018, and October 17, 2018 (the “Orders”). Appellant received electronic notice of the entry of the latter order, denying his timely Motion for Reconsideration, on October 18, 2018. These Orders denied Plaintiff’s Motion to Amend the Complaint and prevented Plaintiff from removing settled Defendants from the caption and adding additional defendants, referred to herein as the Aetius Companies, who are affiliated with Vista Wings, LLC, d/b/a Wild Wing Café – Columbia (“Vista Wings”), and who Plaintiff contends: (1) were directly involved in the management and operation of the restaurant and (2) are directly negligent in the operation of the restaurant during a concert event, which resulted in the Plaintiff being strangled, beaten, and injured.

Appellant’s Memo 0001

On December 20, 2018 the Clerk of Court issued a letter requesting that the parties all submit a memorandum addressing the issue of appealability within ten (10) days of the date of the letter. Pursuant to Rule 240, SCACR, Mr. Finan now responds to this inquiry.

SUMMARY OF THE CURRENT COMPLAINT

On the night of June 5, 2015, Mr. Finan was a patron and invitee at Vista Wings' restaurant, the Wild Wing Café located on Lady Street in Columbia, South Carolina. On that evening, Vista Wings was hosting a concert featuring the Ricky Young Band (the "Event"). According to witnesses, Mr. Finan was violently assaulted during the Event by a group of individuals who were intoxicated at the premises in violation of S.C. Code Ann. § 61-4-580 and S.C. Code Ann. § 61-6-2220. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 1 therein, *Police Report*; Ex. 2 therein, *Excerpts from Deposition of Chris Seiple*).** Mr. Finan has sued Vista Wings, for overserving alcohol during the Event; failing to properly provide trained security, servers, and managers during the Event; and failing to properly manage and supervise its employees and staff during the Event. As a result of Vista Wing's negligence and failure to secure its premises, Vista Wing's intoxicated patrons held Mr. Finan in a defenseless posture, strangled him to point he and others feared his death, and savagely, repeatedly beat him, fracturing his orbital, and scaring his face. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 3 therein, *Excerpts from Deposition of Joni Williamson*; Ex. 4 therein, *Excerpts from Deposition of Richard Finan*; Ex. 5 therein, *Photos of Richard Finan*; Ex. 6 therein, *CENTA Medical Group records for Mr. Finan*).** Therefore, Mr. Finan sued Vista Wings, bringing claims of negligence (including negligent hiring, training, retention, and supervision of employees), premises liability, and dram shop liability.

BACKGROUND RELEVANT TO THE ORDERS

1. On December 6, 2016, together with the Complaint initiating this action, Mr. Finan served his initial written discovery under Rules 33 and 34, SCRCP, on Vista Wings. **Exhibit A: Mr. Finan's Motion for Reconsideration** (Ex. 7 therein, *Plaintiff's First Set of Interrogatories to Vista Wings*; Ex. 8 therein, *Plaintiff's First Set of Requests for Production to Vista Wings*; Ex. 9 therein, *Affidavit of Service*). These requests, in part, were designed to identify whether there were other corporate entities, such as the Aetius Companies, that needed to be added as a party to the case based on the allegations in the Complaint.

2. On March 6, 2017, Mr. Finan was required to file his first Motion to Compel discovery from Vista Wings ("First Motion to Compel") because Vista Wings had failed to provide any response to Mr. Finan's first discovery requests. **Exhibit B: Mr. Finan's First Motion to Compel dated March 6, 2017.**

3. In response, Vista Wings provided its initial responses to Mr. Finan's first discovery requests. See **Exhibit A: Mr. Finan's Motion for Reconsideration** (Ex. 10 therein, *Vista Wing's initial discovery responses*). These responses were made in a manner as to obfuscate the role of the Aetius Companies to the allegations of the Complaint. For example:

a. In response to Interrogatory #1, Vista Wings filed to identify the corporate entities that were actually involved in the facts of this case and would testify through representative witnesses, which in turn hid from Mr. Finan the relationships, sought in Interrogatory #18, between the Aetius Companies, and both Vista Wings, LLC, and the natural persons involved in or performing the acts and omissions detailed in the Complaint.

b. In response to Interrogatory #7, Vista Wings, LLC, did not identify the role

that the Aetius Companies had in employing the persons and taking actions attributed to Vista Wings, LLC, in the Complaint.

c. In response to Interrogatory #8, Vista Wings refused to identify those persons or entities that held the membership interest of Vista Wings, LLC, intentionally hiding the identity of and relationship between it and the Aetius Companies.

4. Vista Wings supplemented its responses to Mr. Finan's First Set of Requests for Production on March 15, 2017. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 11** therein, *Certificate of Service for Vista Wings' Supplemental Responses to Plaintiff's Requests for Production*). However, it did not correct these misleading responses or omissions.

5. On June 21, 2017, following a hearing on the First Motion to Compel, the trial court issued a Form 4 Order requiring Vista Wings to produce records to Mr. Finan relating to the Wild Wing Café location where the event occurred. **Exhibit C: Order dated June 21, 2017.**

6. On July 13, 2017, Mr. Finan was forced to file a Rule to Show Cause and Motion to Compel ("Second Motion to Compel") regarding Vista Wing's failure to respond to Mr. Finan's Interrogatories and Requests for Production. **Exhibit D: Mr. Finan's Second Motion to Compel dated July 13, 2017.**

7. On September 11, 2017, and in response to the Second Motion to Compel, Vista Wings served its Supplemental Answer to Mr. Finan's First Set of Interrogatories, its Second Supplement to Mr. Finan's Request for Production, and a belated verification of its Interrogatory responses. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 12** therein). The Verification was completed by Andy Johnson, who identified himself under oath as the Chief Financial Officer of Vista Wings, LLC. **Id.** As discussed below, counsel for Vista Wings, LLC, subsequently informed

the trial court on March 2, 2018, that he is not the CFO for Vista Wings, LLC, but rather the CFO for one of the Aetius Companies.

8. On September 21, 2017, and in response to the Second Motion to Compel, Vista Wings again served Supplemental Answers to Plaintiff's First Set of Interrogatories and First Set of Requests for Production. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 13 therein).**

9. On November 1, 2017, nearly a month after another Rule 11 letter dated October 6, 2017, due to Vista Wings ignoring outstanding discovery **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 14, therein)**, Vista Wings served its belated answers to Mr. Finan's Second Interrogatories, Third Requests for Production, and Fourth Request for Production. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 15 therein, *Letter dated November 1, 2017, discussing Vista Wing's responses to Plaintiff's Second Set of Interrogatories, Third Requests for Production, and Fourth Requests for Production*).**

11. In response, Mr. Finan served a subpoena on the Aetius Companies on November 14, 2017, in order to determine the level of involvement of these legal entities with the allegations at issue in this case and discover the records in their possession regarding the same. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 16 therein, *November 2017 Subpoenas to Aetius Companies*).**

12. Rather than cooperate with the subpoenas, the Aetius Companies utilized their purported subsidiary, Vista Wings, LLC, to move to quash the subpoenas on November 20, 2017. **Exhibit E: Vista Wings' Motion to Quash.**

13. Therefore, on November 22, 2017, Mr. Finan was required to file another Motion to Compel discovery disclosures ("Third Motion to Compel") from Vista Wings, LLC in order to

obtain discovery sought, including (a) the identification of the members of Vista Wings, LLC; (b) the identification of those who hired, trained, and supervised bartenders and security personnel working during the event and those persons' qualifications; and (c) employment records. All of this information had been sought since the very initiation of the lawsuit. **Exhibit F: Mr. Finan's Third Motion to Compel dated November 22, 2017.**

14. Likewise, on December 14, 2017, Mr. Finan was required to file a Motion to Compel Subpoena Responses and Rule to Show Cause in order to discover the responses from the Aetius Companies. **Exhibit G: Mr. Finan's Motion to Compel Subpoena Responses dated December 13, 2017.**

15. On March 2, 2018, Judge Benjamin heard oral argument on Mr. Finan's Third Motion to Compel and Motion to Compel Subpoena Responses and Rule to Show Cause, as well as Vista Wings, LLC's Motion to Quash. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 17 therein, *Transcript from hearing on March 2, 2018*).** During that hearing, Mr. Finan's counsel argued that it needed cooperation from Vista Wings, LLC, and the Aetius Companies in discovery so that Mr. Finan could learn of the operational involvement of the Aetius Companies and their role in the allegations of the Complaint. **Id., p. 11, l. 13 – p. 12, l. 24.**

16. During the hearing, Judge Benjamin requested that Mr. Finan's counsel prepare an order granting the Motion to Compel Subpoena Responses and Rule to Show Cause, attaching revised subpoenas that allowed the Aetius Companies twenty (20) days to respond. **Id., p. 41, l. 4 – p. 42, l. 2.** In response to the Motion to Compel, Judge Benjamin likewise requested that Mr. Finan's counsel prepare an order requiring Vista Wings, LLC, and the Aetius Companies to provide employment records. **Id., p. 43, l. 5-18.**

17. During the hearing on March 2, 2018, counsel for Vista Wings, LLC, indicated that some of the witnesses identified as being involved in planning and scheduling the concert event at issue have not “worked in the store” and that he did not “know who they are or how they’re involved.” *Id.*, p. 47, l. 19 – p. 48, l. 14.

18. Likewise, in the hearing on March 2, 2018, counsel for Vista Wings, LLC, indicated for the first time to the court that Andy Johnson (who previously stated under oath in the verification of Vista Wings, LLC’s discovery responses that he was the Chief Financial Officer of Vista Wings, LLC) was in fact not the CFO of Vista Wings, LLC, but rather the CFO of “one” of the Aetius Companies. *Id.* p. 48, l. 24 – p. 53, l. 2.

19. Not wanting to delay depositions of the Vista Wings, LLC, witnesses further and trusting that additional discovery production would be forthcoming following the hearing on March 2, 2018, Plaintiff deposed witness Brian Neal on March 13, 2018. **Exhibit A: Mr. Finan’s Motion for Reconsideration (Ex. 18** therein, *Deposition of Brian Neal*). Additional Vista Wings, LLC depositions were scheduled to be taken then, but for personal reasons of a witness, were cancelled the day of the deposition.

20. During this deposition, Mr. Neal, the general manager of the Wild Wing Café location at issue, disclosed information to Mr. Finan that demonstrated the need to add the Aetius Companies as defendants to the lawsuit. For example, Mr. Neal disclosed the following:

a. Mr. Neal stated that his actual employer was the “corporate office” in Charlotte, North Carolina, and that is where his “bosses” work, as well as his “CEOs,” “CFOs” “Regional Managers” and “marketing department” work [*Id.* p. 13, l. 23 – p. 15, l. 12];

b. The training decisions for the “front of the house” employees involved in the

allegations of the Complaint were made by the “home office,” not the local operating company, Vista Wings, LLC [Id. p. 31, l. 6 – p. 32, l. 14; p. 34, ll. 9-18; p. 107, l. 17 – p. 108, l. 6; p. 108, ll. 20-22];

c. The employment and training of the managers in the various Wild Wing locations was “handled” by the “home office” and “corporate trainers.” [Id. p. 46, l. 13– p. 47, l. 23; p. 119, ll. 6-20; p. 122, l. 16 – p. 123, l. 10];

d. The “corporate office” is responsible for the software that tracks staffing ratios, labor costs to sales ratios, and alcohol service used at the Wild Wing Café in the Vista [Id. p. 64, l. 6 – p. 65, l. 11];

e. One of the executives in Charlotte puts together a weekly “ranking report” to increase competition between the various operating companies in terms of sales, cost of labor, etc. [Id. p. 73, l. 6 – p. 74, l. 8];

f. The corporate office moves employees and managers from operation to operation in order to improve performance at different companies [Id. p. 74, l. 9 – p. 76, l. 12];

g. The “home office” maintains all of the financial records for Vista Wings, LLC, and is the only one knowledgeable about its financial performance [Id. p. 128, l. 13 – p. 129, l. 1; p. 149, ll. 10-16];

h. The “home office” pays the bands, such as the band on duty for the concert event that is the issue of this lawsuit [Id. p. 134, l. 21 – p. 135, l. 13];

i. The “home office” instructs Vista Wings, LLC’s managers and employees when to spend their internal meetings, called “ally rallies,” discussing and hyping concert events like the one at issue in this lawsuit [Id. p. 139, ll. 7-17];

j. The “corporate office” propagates training manuals for use by the staff of

Vista Wings, LLC [**Id. p. 199, ll. 6-11**];

k. The “corporate office” pays for promos offered by Vista Wings, LLC [**Id. p. 164, ll. 6-11**];

l. The “corporate” parent dictates the budget and financial targets of Vista Wings, LLC [**Id. p. 199, l. 1 – p. 200, l. 13**];

m. the “corporate” human resource department is often involved in decisions to terminate Vista Wings, LLC’s employees [**Id. p. 113, l. 2 - p. 155, l. 20**];

21. However, Mr. Neal is not able to identify which of the Aetius Companies performs any or all of these operational roles for the Wild Wing Café located in the Vista that is at issue in this case. **Id. p. 21 l. 15 – p. 22, l. 7.**

22. Promptly seven (7) days following the deposition of Brian Neal, Mr. Finan filed the Motion to Amend his lawsuit that is the subject of this motion. **Exhibit H: Mr. Finan’s Motion to Amend dated March 20, 2018.**

23. Simultaneously, after conferring with counsel for Vista Wings, LLC, and the Aetius Companies on the form of the Order, Mr. Finan’s counsel submitted a proposed order to Judge Jefferson on March 20, 2018. **Exhibit A: Mr. Finan’s Motion for Reconsideration (Ex. 19 therein, Proposed Order).**

24. Vista Wings, LLC and the Aetius Companies continued to oppose the form of the Order after additional changes were made to it; therefore, Judge Benjamin requested a copy of the transcript be provided to her by the parties. This copy was obtained and immediately forwarded to Judge Benjamin on May 24, 2018. **Exhibit A: Mr. Finan’s Motion for Reconsideration (Ex. 20 therein, Email with Judge Benjamin’s Chambers).** As of the time of this appeal, Judge Benjamin had

not issued an Order following the March 2, 2018 hearing.

25. On July 7, 2018, nearly four (4) months after the Motion to Amend was filed, Vista Wings, LLC, and the Aetius Companies served much of the discovery material and interrogatory responses sought by Mr. Finan in the March 2, 2018 hearing. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 21** therein, *Discovery Responses received July 9, 2018*). In these responses, Vista Wings, LLC, for the first time disclosed that Aetius Restaurant Group, LLC, owns its membership interests. Promptly after the delivery of this discovery long sought in this case by Mr. Finan, the parties began working together to get the depositions scheduled of the various fact witnesses for Vista Wings, LLC, and the Aetius Companies. **Exhibit A: Mr. Finan's Motion for Reconsideration (Ex. 22** therein, *Email exchange regarding deposition scheduling beginning July 9, 2018*).

26. Due to the need for an order from the hearing on March 2, 2018; the need additional discovery pending the receipt of this order; the need to conduct *de bene esse* depositions of out-of-state parties, and the fact that Mr. Finan's Motion to Amend had been pending for nearly five (5) months without being set for a hearing by Richland County, Mr. Finan filed a Motion for Continuance in this case on August 9, 2018.

27. Judge Hood, as Chief Administrative Judge of this Circuit, granted the Motion for Continuance on August 13, 2018. **Exhibit C: Order dated August 13, 2018.**

28. The record in this case is otherwise replete with examples of testimony that show that the Aetius Companies were involved in every aspect of the Event. Just by way of example, on September 24, 2018, Plaintiff took a *de bene esse* deposition of Ashley Coakley. Ms. Coakley further demonstrated the need to add the Aetius Companies as defendants to the lawsuit. She

admitted that she was employed by one of the Aetius Companies, referred to by her as Aetius Restaurant Holdings, as the Vice President of Marketing. She testified that, as a part of her normal employment for Aetius Restaurant Holdings, either she or her staff prepared the marketing and promotional materials for the Event. **Exhibit I: Deposition of Ashley Coakley, p. 3, l. 9 - p. 7, l. 20.**

ANALYSIS

Mr. Finan has a substantial right to control his Complaint and proceed to a trial on the merits against all proper Defendants in this case. The Orders prevent him from doing so, and they leave him with no choice but to file additional lawsuits on the same occurrence, adding additional hurdles due to his inability to rely on the relation-back doctrine under Rule 15(c), SCRCP. Therefore, the Orders are immediately appealable under S.C. Code Ann. § 14-3-330(2) and controlling authority.

In Neeltex Enterprises, Inc. v. Long, the Supreme Court of South Carolina reviewed an appeal by a plaintiff from an order requiring substitution of different defendants. 397 S.C. 563, 725 S.E.2d 926 (2012). The Supreme Court reversed the decision of this court, which dismissed the appeal on grounds that the order was not immediately appealable. In its analysis, the Supreme Court reasoned that, where no specialized statute applies, appealability is determined by S.C. Code Ann. § 14-3-330, which provides in pertinent part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

Id., at 566, 725 S.E.2d at 928. The Court then went on to hold that an interlocutory order that prevents a plaintiff from choosing the Defendants to a lawsuit is immediately appealable:

An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a). **The right of the plaintiff to choose her defendant is a substantial right within the meaning of this subsection.**

Id. (emphasis added).

The Court reiterated this position in Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015). In Morrow, the Court concluded that this court erred by holding the trial court's order of bifurcation was not immediately appealable because the order affects the same substantial right. In holding that the order was immediately appealable, the Court stated:

The effect of this order is to **prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.** ... To prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.

Morrow, 412 S.C. at 539, 773 S.E.2d 146-47 (citing Neeltec, *supra*).

For the same reasons stated by the Court in Morrow and Neeltec, it would be error for this court to dismiss the appeal as not immediately appealable, thereby requiring the Plaintiff to proceed to trial in the instant action without the proper defendants involved in the trial. Specifically, the Orders on appeal in this matter prevent Mr. Finan from being the architect of his own Complaint, and thereby prevent him from proceeding to trial in the instant lawsuit against the defendants of his choice.

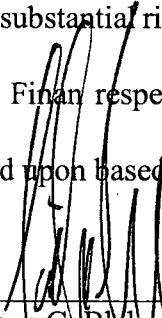
Moreover, the Orders encourage piecemeal litigation by requiring Plaintiff to file an entirely new lawsuit against the Aetius Companies, which are entities closely affiliated with Vista Wings, LLC, and have been involved in this lawsuit already. The Orders would require Mr. Finan to litigate

anew all of the facts developed in the current lawsuit against these other proper parties he worked so hard to discover through the instant lawsuit. The record demonstrates that there are ample grounds to find that Mr. Finan had a good faith basis, required by Rule 11, SCRCF, to seek to amend his Complaint and add the Aetius Companies in March 2018.

The Order further deprives the Plaintiff of the ability to avail himself of the relation-back provisions of Rule 15(c), SCRCF, and by doing so, could - if Vista Wings' arguments on the accrual of the statute of limitations is correct - operate as a final adjudication forever barring Mr. Finan's claims against the Aetius Companies. Plaintiff vehemently disagrees with this position and has attempted to provide a record to support the obfuscation of the Aetius Companies' direct role in the Event and the operation of the Wild Wings in the Vista. However, if Vista Wings is correct, and the statute of limitations on Mr. Finan's claims against the Aetius Companies ran on June 5, 2018, while the Motion to Amend was pending, then the Orders operate to forever bar any of Mr. Finan's claims against the Aetius Companies, as Rule 15(c), SCRCF's relation-back doctrine is the only way he may seek relief from those parties.

Therefore, because the Orders affect a substantial right under S.C. Code Ann. § 14-3-330(2), the Orders are immediately appealable. Mr. Finan respectfully requests that this Court lift the abeyance of the appeal and allow it to be ruled upon based on the merits of it.

December 3/ 2018.



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ATTORNEYS FOR THE APPELLANT

INDEX OF EXHIBITS

Ex. A: Mr. Finan's Motion for Reconsideration dated September 13, 2018, with twenty-two (22) Exhibits

Ex. B: Mr. Finan's First Motion to Compel dated March 6, 2017, without any of the Exhibits

Ex. C: Order dated June 1, 2017

Ex. D: Mr. Finan's Second Motion to Compel dated July 13, 2017, without any of the Exhibits

Ex. E: Vista Wings' Motion to Quash dated November 20, 2017

Ex. F: Mr. Finan's Third Motion to Compel dated November 22, 2017, without any of the Exhibits

Ex. G: Mr. Finan's Motion to Compel Subpoena Responses dated December 13, 2017, with Exhibits

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Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**PLAINTIFF'S MOTION TO
RECONSIDER, ALTER, AND AMEND
ORDER DENYING PLAINTIFF'S
MOTION TO AMEND THE COMPLAINT**

To: Ryan C. Holt, Esq., William H. Yarborough, Esq., and Mark S. Barrow, Esq., Attorneys
for Vista Wings, LLC:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff Richard A. Finan, ("Mr. Finan") will move this Honorable Court for an order, pursuant to Rule 59(e), SCRCF, to reconsider the Order Denying Plaintiff's Motion to Amend entered September 7, 2018 (the "Order") and to alter and amend the Order to allow Plaintiff to amend the Complaint by adding Aetius Companies, LLC, Aetius Franchising, LLC, Aetius Restaurant Holdings, LLC, and Aetius Restaurant Group, LLC (collectively, the "Aetius Companies")¹, to the lawsuit as a party and to remove the settled Defendants, Brent Weston and Aaron Miller from the caption of this case.

Summary of the Filed Complaint

On the night of June 5, 2015, Mr. Finan was a patron and invitee at the Defendant Vista Wings' restaurant, Wild Wing Café, located on Lady Street in Columbia, South Carolina. On that evening, Vista Wings was hosting a concert featuring the Ricky Young Band (the "Event").

¹ Due to belated discovery responses owed by Vista Wings, LLC, when the Motion to Amend was filed on March 20, 2018, Plaintiff sought to add additional companies and individuals as party-Defendants. Belated discovery responses were received on July 8, 2018. Therefore, at the hearing on Sept. 6, 2018, Plaintiff withdrew the Motion as to Axum Capital Partners Management, LLC, Axum Capital Partners, LLC, Craig Hepfner, and Santana Griffin.

According to witnesses, Mr. Finan was violently assaulted during the Event by a group of individuals who were intoxicated at the premises in violation of S.C. Code Ann. § 61-4-580 and S.C. Code Ann. § 61-6-2220. **Ex. 1, Police Report; Ex. 2, Excerpts from Deposition of Chris Seiple.** Mr. Finan has sued Vista Wing's for overserving alcohol during the Event; failing to properly provide trained security, servers, and managers during the Event; and failing to properly manage and supervise its employees and staff during the Event. As a result of Vista Wing's negligence and failure to secure its premises, Vista Wing's intoxicated patrons held Mr. Finan in a defenseless posture, strangled him to point he and others feared his death, and savagely, repeatedly beat him, fracturing his orbital, and scaring his face. **Ex. 3, Excerpts from Deposition of Joni Williamson; Ex. 4, Excerpts from Deposition of Richard Finan; Ex. 5, Photos of Richard Finan; Ex. 6, CENTA Medical Group records for Mr. Finan.** Therefore, Mr. Finan has filed suit against Vista Wings, bringing claims of negligence (including negligent hiring, training, retention, and supervision of employees), premises liability, and dram shop liability.

Standard for Motion to Reconsider, Alter, and Amend

“[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments. Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). “A motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) (“purpose of Rule 59(e), SCRC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits”); Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003) (an

example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a “motion to reconsider” or “motion for reconsideration”); James Flanagan, *South Carolina Civil Procedure*, 494-495 (3d ed. 2010) (stating that 59(e) “provides an opportunity for the trial court to correct errors in the finding and perhaps change the result”). “There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Elam*, 361 S.C. at 21-22, 602 S.E.2d at 779.

Relevant Background to Motion

1. On December 6, 2016, together with the Complaint initiating this action, Mr. Finan served his initial written discovery under Rules 33 and 34, SCRCP, on Vista Wings. *Ex. 7, Plaintiff's First Set of Interrogatories to Vista Wings; Ex. 8, Plaintiff's First Set of Requests for Production to Vista Wings; Ex. 9, Affidavit of Service.* These requests, in part, were designed to identify whether there were other corporate entities, such as the Aetius Companies, that needed to be added as a party to the case based on the allegations in the Complaint.

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3. In response, Vista Wings provided its initial responses to Mr. Finan’s first discovery requests. See *Ex. 10, Vista Wing's initial discovery responses.* These responses were made in a manner as to obfuscate the role of the Aetius Companies to the allegations of the Complaint. For example:

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entities that were actually involved in the facts of this case and would testify through representative witnesses, which in turn hid from Mr. Finan the relationships, sought in Interrogatory #18, between the Aetius Companies, and both Vista Wings, LLC, and the natural persons involved in or performing the acts and omissions detailed in the Complaint.

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7. On September 11, 2017, and in response to the Second Motion to Compel, Vista

Wings served its Supplemental Answer to Mr. Finan's First Set of Interrogatories, its Second Supplement to Mr. Finan's Request for Production, and a belated verification of its Interrogatory responses. **Ex. 12.** The Verification was completed by Andy Johnson, who identified himself under oath as the Chief Financial Officer of Vista Wings, LLC. **Id.** As discussed below, counsel for Vista Wings, LLC, subsequently informed this court on March 2, 2018, that he is not the CFO for Vista Wings, LLC, but rather the CFO for one of the Aetius Companies.

8. On September 21, 2017, and in response to the Second Motion to Compel, Vista Wings again served Supplemental Answers to Plaintiff's First Set of Interrogatories and First Set of Requests for Production. **Ex. 13.**

9. On November 1, 2017, nearly a month after another Rule 11 letter dated October 6, 2017, due to Vista Wings ignoring outstanding discovery [**Ex. 14**], Vista Wings served its belated answers to Mr. Finan's Second Interrogatories, Third Requests for Production, and Fourth Request for Production. **Ex. 15, Letter dated November 1, 2017, disclosing Vista Wing's responses to Plaintiff's Second Set of Interrogatories, Third Requests for Production, and Fourth Requests for Production.**

11. In response, Mr. Finan served subpoena on the Aetius Companies on November 14, 2017, in order to determine the level of involvement of these legal entities with the allegations at issue in this case and discover the records in their possession regarding the same. **Ex. 16, November 2017 Subpoenas to Aetius Companies.**

12. Rather than cooperate with the subpoenas, the Aetius Companies utilized their purported subsidiary, Vista Wings, LLC, to move to quash the subpoenas on November 20, 2017. This Motion to Quash is a matter of record in this case, and it is incorporated herein by reference.

13. Therefore, on November 22, 2017, Mr. Finan was required to file another Motion to Compel discovery disclosures (“Third Motion to Compel”) from Vista Wings, LLC in order to obtain discovery sought, including (a) the identification of the members of Vista Wings, LLC; (b) the identification of those who hired, trained, and supervised bartenders and security personnel working during the event and those persons’ qualifications; and (c) employment records. All of this information had been sought since the very initiation of the lawsuit. The Third Motion to Compel is a matter of record in this case, and it is incorporated herein by reference.

14. Likewise, on December 14, 2017, Mr. Finan was required to file a Motion to Compel Subpoena Responses and Rule to Show Cause in order to discover the responses from the Aetius Companies. Mr. Finan’s Motion to Compel Subpoena Responses and Rule to Show Cause is a matter of record in this case, and it is incorporated herein by reference.

15. On March 2, 2018, Judge Benjamin heard oral argument on Mr. Finan’s Third Motion to Compel and Motion to Compel Subpoena Responses and Rule to Show Cause, as well as Vista Wings, LLC’s Motion to Quash. *Ex. 17, Transcript from hearing on March 2, 2018.* During that hearing, Mr. Finan’s counsel argued that it needed cooperation from Vista Wings, LLC, and the Aetius Companies in discovery so that Mr. Finan could learn of the operational involvement of the Aetius Companies and their role in the allegations of the Complaint. *Id.*, p. 11, l. 13 – p. 12, l. 24.

16. During the hearing, Judge Benjamin requested that Mr. Finan’s counsel prepare an order granting the Motion to Compel Subpoena Responses and Rule to Show Cause, attaching revised subpoenas that allowed the Aetius Companies twenty (20) days to respond. *Id.*, p. 41, l. 4 – p. 42, l. 2. In response to the Motion to Compel, Judge Benjamin likewise requested that Mr. Finan’s counsel prepare an order requiring Vista Wings, LLC, and the Aetius Companies to

provide employment records *Id.*, p. 43, l. 5-18.

17. During the hearing on March 2, 2018, counsel for Vista Wings, LLC, indicated that some of the witnesses identified as being involved in planning and scheduling the concert event at issue have not “worked in the store” and that he did not “know who they are or how they’re involved.” *Id.*, p. 47, l. 19 – p. 48, l. 14.

18. Likewise, in the hearing on March 2, 2018, counsel for Vista Wings, LLC, indicated for the first time to the court that Andy Johnson (who previously stated under oath in the verification of Vista Wings, LLC’s discovery responses that he was the Chief Financial Officer of Vista Wings, LLC) was in fact not the CFO of Vista Wings, LLC, but rather the CFO of “one” of the Aetius Companies. *Id.* p. 48, l. 24 – p. 53, l. 2.

19. Not wanting to delay depositions of the Vista Wings, LLC, witnesses further and trusting that additional discovery production would be forthcoming following the hearing on March 2, 2018, Plaintiff deposed witness Brian Neal on March 13, 2018. *Ex. 18, Deposition of Brian Neal*. Additional Vista Wings, LLC depositions were scheduled to be taken then, but for personal reasons of a witness, were cancelled the day of the deposition.

20. During this deposition, Mr. Neal, the general manager of the Wild Wing Café location at issue, disclosed information to Mr. Finan that demonstrated the need to add the Aetius Companies as defendants to the lawsuit. For example, Mr. Neal disclosed the following:

a. Mr. Neal stated that his actual employer was the “corporate office” in Charlotte, North Carolina, and that is where his “bosses” work, as well as his “CEOs,” “CFOs” “Regional Managers” and “marketing department” work [*Id.* p. 13, l. 23 – p. 15, l. 12];

b. The training decisions for the “front of the house” employees involved in the allegations of the Complaint were made by the “home office,” not the local operating company,

Vista Wings, LLC [Id. p. 31, l. 6 – p. 32, l. 14; p. 34, ll. 9-18; p. 107, l. 17 – p. 108, l. 6; p. 108, ll. 20-22];

c. The employment and training of the managers in the various Wild Wing locations was “handled by the “home office” and “corporate trainers.” [Id. p. 46, l. 13– p. 47, l. 23; p. 119, ll. 6-20; p. 122, l. 16 – p. 123, l. 10];

d. The “corporate office” is responsible for the software that tracks staffing ratios, labor costs to sales ratios, and alcohol service used at the Wild Wing Café in the Vista [Id. p. 64, l. 6 – p. 65, l. 11];

e. One of the executives in Charlotte tracks puts together a weekly “ranking report” to increase competition between the various operating companies in terms of sales, cost of labor, etc. [Id. p. 73, l. 6 – p. 74, l. 8];

f. The corporate office moves employees and managers from operation to operation in order to improve performance at difference companies [Id. p. 74, l. 9 – p. 76, l. 12];

g. The “home office” maintains all of the financial records for Vista Wings, LLC, and is the only one knowledgeable about its financial performance [Id. p. 128, l. 13 – p. 129, l. 1; p. 149, ll. 10-16];

h. The “home office” pays the bands, such as the band on duty for the concert event that is the issue of this lawsuit [Id. p. 134, l. 21 – p. 135, l. 13];

i. The “home office” instructs Vista Wings, LLC’s managers and employees when to spend their internal meetings, called “ally rallies,” discussing and hyping concert events like the one at issue in this lawsuit [Id. p. 139, ll. 7-17];

j. The “corporate office” propagates training manuals for use by the staff of Vista Wings, LLC [Id. p. 199, ll. 6-11];

k. The “corporate office” pays for promos offered by Vista Wings, LLC [*Id.* p. 164, ll. 6-11];

l. The “corporate” parent dictates the budget and financial targets of Vista Wings, LLC [*Id.* p. 199, l. 1 – p. 200, l. 13];

m. the “corporate” human resource department is often involved in decisions to terminate Vista Wings, LLC’s employees [*Id.* p. 113, l. 2 - p. 155, l. 20];

21. However, Mr. Neal is not able to identify which of the Aetius Companies performs any or all of these operational roles for the Wild Wing Café in the located in the Vista that is at issue in this case. *Id.* p. 21 l. 15 – p. 22, l. 7.

22. Promptly seven (7) days following the deposition of Brian Neal, Mr. Finan filed the Motion to Amend his lawsuit that is the subject of this motion. Mr. Finan’s Motion to Compel Subpoena Responses and Rule to Show Cause is a matter of record in this case, and it is incorporated herein by reference.

23. Simultaneously, after conferring with counsel for Vista Wings, LLC, and the Aetius Companies on the form of the Order, Mr. Finan’s counsel submitted a proposed order to Judge Jefferson on March 20, 2018. *Ex. 19, Proposed Order.*

24. Vista Wings, LLC and the Aetius Companies continued to oppose the form of the Order after additional changes were made to it; therefore, Judge Benjamin requested a copy of the transcript be provided to her by the parties. This copy was obtained and immediately forwarded to Judge Benjamin on May 24, 2018. *Ex. 20, Email with Judge Benjamin’s Chambers.* As of the time of this Motion, Judge Benjamin has not issued an Order following the March 2, 2018 hearing.

25. On July 7, 2018, nearly four (4) months after the Motion to Amend was filed, Vista Wings, LLC, and the Aetius Companies served much of the discovery material and interrogatory

responses sought by Mr. Finan in the March 2, 2018 hearing. **Ex. 21**, *Discovery Responses received July 9, 2018*. In these responses, Vista Wings, LLC, for the first time disclosed that Aetius Restaurant Group, LLC, owns its membership interests. Promptly up the delivery of this discovery long sought in this case by Mr. Finan, the parties began working together to get the depositions scheduled of the various fact witnesses for Vista Wings, LLC, and the Aetius Companies. **Ex. 22**, *Email exchange regarding deposition scheduling beginning July 9, 2018*.

26. Due to the need for an order from the hearing on March 2, 2018; the need additional discovery pending the receipt of this order; the need to conduct *de bene esse* depositions of out-of-state parties, and the fact that Mr. Finan's Motion to Amend had been pending for nearly five (5) months without being set for a hearing by Richland County, Mr. Finan filed a Motion for Continuance in this case on August 9, 2018. Judge Hood, as Chief Administrative Judge of this Circuit, granted the Motion for Continuance on August 13, 2018. Both the Motion for Continuance and the Order granting the Motion for Continuance are a matter of record in this case, and it is incorporated herein by reference.

Analysis

- A. Mr. Finan will be denied the substantial right to proceed to trial against proper Defendants in this lawsuit, in violation of Rule 15, SCRCP, if the Order is not withdrawn and substituted with an Order that allows Mr. Finan to file an Amended Complaint naming the Aetius Companies.**

The South Carolina Supreme Court has held: “[A]n order depriving a plaintiff of his or her ability to determine the defendant against whom he or she brings a cause of action can affect a substantial right, making the order immediately appealable.” Dorn v. Cohen, 418 S.C. 126, 137–38, 791 S.E.2d 313, 319 (Ct. App. 2016), reh'g denied (Oct. 27, 2016), aff'd as modified, 421 S.C. 517, 809 S.E.2d 53 (2017) (citing Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015) (“The effect of this order is to prevent the [plaintiffs]

from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.”); Neeltec Enters., Inc. v. Long, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (“The right of the plaintiff to choose [his] defendant is a substantial right within the meaning of this subsection.”). The only grounds provided in the Order for not allowing Mr. Finan to file his First Amended Complaint in this action adding the Aetius Companies and removing the Settling Defendants as parties is that the amendment would “add unnecessary complication one month prior to the trial date. As a result, Defendant would be prejudiced if the Court were to grant Plaintiff’s Amendment.”

Respectfully, Mr. Finan asserts that the Order’s analysis fails to comport with the requirements of Rule 15, SCRCF. As the South Carolina Supreme Court has recently stated:

Rule 15(a) provides that when a party asks to amend his pleading, “leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), SCRCF. “This rule strongly favors amendments and the court is encouraged to freely grant leave to amend.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing Jarrell v. Seaboard Sys. R.R., Inc., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). “Rule 15(a) is substantially the same as the Federal Rule,” Rule 15(a), SCRCF notes, and the Supreme Court of the United States has referred to the Rule’s “freely given” provision as a “mandate” that “is to be heeded,” Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962). The Foman Court continued: “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay,

bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” Id. (citing Fed. R. Civ. P. 15(a)); *accord* Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988).

Patton v. Miller, 420 S.C. 471, 489–90, 804 S.E.2d 252, 261–62 (2017), reh'g denied (Sept. 27, 2017). The Supreme Court has further made it clear that “Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party *at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.*” Patton, 420 S.C. at 491, 804 S.E.2d at 262–63 (emphasis added).

This Motion to Amend was not filed a month before the October 8, 2018, term of court when it next may appear on the docket. The Motion to Amend was filed nearly six (6) months prior to the hearing on the Motion to Amend. Therefore, the reasoning of the Order is flawed, as it holds Mr. Finan responsible for the scheduling of hearings in a busy circuit court system that is facing a known court reporter shortage and is eliminating civil terms of court. The Motion to Amend itself was timely, being filed precisely one (1) week following the first discovery device – the deposition of Brian Neal – whereby Mr. Finan first learned of grounds, sufficient under Rule 11, SCRCF, to name the Aetius Companies as Defendants.

More importantly, the case was not then – or now – ready for any trial. Mr. Finan served discovery with his Complaint. As the timeline above demonstrates, Vista Wings, LLC, and the Aetius Companies themselves have acted to repeatedly delay and avoid discovery being conducted

in this matter, materially delaying the case becoming ready for trial. Therefore, justice does not permit Vista Wings, LLC, to rely upon the mere fact that the lawsuit has been pending for over a year as the source of alleged “prejudice” to it. An Order from the Third Motion to Compel heard on March 2, 2018 (18 days before the Motion to Amend was filed) is still forthcoming. Discovery documents and interrogatory responses long sought by Mr. Finan were served by Vista Wings in July 2018. As a result these issues, Judge Hood granted a Consent Order of Continuance in this case one (1) month ago. Both parties agreed in that motion that depositions still needed to be scheduled and conducted in this matter prior to trial, which has not yet occurred.

Most importantly, the fact that this Motion to Amend was heard a month before the case may appear again on a docket does not itself establish any prejudice to Vista Wings, LLC, the non-moving party. Vista Wings, LLC, has failed to articulate – much less show by any proper evidence or affidavit – how any delay from the amendment will put it “at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” The record is devoid of any grounds to establish prejudice by that delay.

Conversely, the prejudice to Mr. Finan if the Motion to Amend is denied is material. As argued during the hearing on the Motion to Amend, the denial of the amendment to add parties deprives Mr. Finan of the ability to pursue his case and obtain a judgment against the proper entity and to seek payment from that entity or its insurer; it subjects Mr. Finan to defenses by Vista Wings, LLC’s vicarious liability due to the employment relationships and conduct performed by natural persons working for its parents, the Aetius Companies; and it subjects Mr. Finan to potential statute of limitation defenses that he may face if he were to now file a separate lawsuit against the Aetius Companies for the same conduct outlined in the Complaint.

While the order does not address this matter, even the Aetius Companies cannot be found to have suffered any prejudice as being added at this time. Due to the need to discover the information sought through written discovery, Mr. Finan has only deposed one (1) person in this case associated with Vista Wings or the Aetius Companies. If added at this time, the Aetius Companies would be able to participate in all of the meaningful discovery related to its liability. Moreover, as the self-proclaimed “parents” of Vista Wings, LLC, the Aetius Companies have already been involved in all material aspects of this litigation. Their employee and officer, Andy Johnson, is the one who has verified all of the written discovery produced by Vista Wings, LLC to date.

Finally, the Order is silent on Mr. Finan’s Motion to Amend to the extent it seeks to drop Brent Weston and Aaron Miller from the caption in this case. As the parties have already filed Stipulations of Dismissal as to these parties, then there is no reason why the Motion to Amend should be denied in this regard.

Conclusion

The Order fails to comply with Rule 15, SCRCP, as it fails to identify any actual prejudice to Vista Wings, LLC, by the amendment, much less a prejudice that is so material as to outweigh the overwhelmingly policy in favor of freely granting an amendment. However, the Order works substantial prejudice to Mr. Finan and deprives him of a substantial right. Therefore, the Order should be withdrawn and replaced with an order that allows Mr. Finan to file a First Amended Complaint that add Aetius Companies, LLC, Aetius Franchising, LLC, Aetius Restaurant Holdings, LLC, and Aetius Restaurant Group, LLC to the lawsuit as a party and to remove the settled Defendants, Brent Weston and Aaron Miller from the caption of this case.

[Signature on Following Page]

Respectfully Submitted,

s/ Shaun C. Blake

Shaun C. Blake (SC Bar # 76349)

Jenkins M. Mann (SC Bar #74884)

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September 13, 2018

ATTORNEYS FOR PLAINTIFF

Exhibit 1
Motion to Reconsider

SC0400100

INCIDENT REPORT

ONLY

150015195

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 16-03-0600(E) SIMPLE ASSAULT 13B SIMPLE ASSAULT		☒ YES ☐ NO	☐ YES ☒ NO	BAR/NIGHTCLUB/LOUNGE		☒ Individual
2.		☐ YES ☐ NO	☐ YES ☐ NO			☐ Business
3.		☐ YES ☐ NO	☐ YES ☐ NO			☐ Financial Inst
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE		
729 LADY ST, COLUMBIA, SC		25001-		PERSONAL WEAPON		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME
09/05/2015	23:45		09/05/2015	00:01	09/05/2015	00:02
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
FINAN, RICHARD		#1 ST #2 ST #3 ST		S	W	M
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
3837 ROBERTS RD		HOPKINS		SC	29091-	213
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
FINAN, RICHARD		#1 ST #2 ST #3 ST		S	W	M
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
3837 ROBERTS RD		HOPKINS		SC	29091-	269
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
3837 ROBERTS RD		HOPKINS		SC	29091-	269
VIOLENCE (M/T) ☒ YES ☐ NO EXPLAIN		Locations Minor		COMPLAINANT NON-VIOLENCE ☐ YES ☐ NO		
VICTIM NO. 1 USING ALCOHOL ☒ YES ☐ NO ☐ UNK		DRUGS: ☐ YES ☒ NO ☐ UNK		TYPE:		
TWO MAN VEH ☒ ONE MAN VEH ☐ DETECTIVE PLASME ☐ OTHER ☐ ALONE ☐ ASSISTED ☐		*J-This Jurisdiction S-State O-Out of State U-Unknown				
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH
	UNKNOWN, UNKNOWN		W	M	1	N
☐ RUNAWAY	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RELATED OFFENSE(S)		DAYTIME PHONE	EVENING PHONE
☐ WANTED			13B			
☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
☐ ARREST	UNKNOWN					
☐ JAIL	SUBJECT NO. 1 USING ALCOHOL ☐ YES ☐ NO ☒ UNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ UNK		DATE/TIME OF OFFENSE	
☐ SUMMONS	DRUGS ☐ YES ☐ NO ☒ UNK TYPE		TOTAL # ARRESTED		DATE/TIME OF ARREST	
DAY OF THE WEEK		HOW REPORTED		A= OFFICER DISPATCHED ON CALL D= COMPLAINT WRITTEN IN		DIFF. FACTOR
S M T W T F S UNK		A B C D E F		B= REPORT TAKEN BY PHONE E= OFFICER INITIATED		N
1 2 3 4 5 6 7 8				C= COMPLAINANT WALKED IN F= OTHER		
				A= RESISTANCE/HOSTILITY B= WEAPONS		E= COMPLAINANT FREQUENTLY INTOXICATED
				C= UNFOUNDED CALLS D= MENTAL SUBJECT		F= DOMESTIC N= NORMAL
R/O WAS OUTSIDE OF THE INCIDENT LOCATION (WILD WINGS) AND OBSERVED SEVERAL PEOPLE BEING ESCORTED OUT OF THE LOCATION BY THE SECURITY STAFF OF WILD WINGS. R/O RESPONDED AND AFTER SEVERAL MINUTES GAINED CONTROL OF THE SITUATION ALONG WITH OTHER OFFICERS THAT RESPONDED.						
R/O OBSERVED THE VICTIM TO HAVE SEVERAL LACERATIONS AROUND HIS RIGHT EYE AND WAS BLEEDING. VICTIM STATED THAT HE WAS ASSAULTED INSIDE THE LOCATION BY AN UNKNOWN SUBJECT (SUBJECT 1). R/O RESPONDED TO THE SCENE AND TREATED THE VICTIM FOR HIS INJURIES.						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S. F. ☐ A ☐ B	☒ ACTIVE ☐ ADM. CLOSED	ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18
					☐ UNFOUNDED	ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER
REASON FOR DECEPTIONAL CLEARANCE		1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION		3 ☐ EXPIRATION DENIED 4 ☐ VICTIM DECLINES COOPERATION		5 ☐ JUVENILE IN CUSTODY
REPORTING OFFICER(S)		DATE		APPROVING OFFICER		DATE
POAGE JUSTIN W		05/08/2015 02:21:43		HOWE DAVID A		05/08/2015 04:57:30
FOLLOWUP INVESTIGATION ☐ YES ☐ NO		OFFICER				

Appellants Memo 0032

ADDITIONAL NARRATIVE

Agency Name: City of Columbia Police Department	ORI #: SC0400100	Report Date/Time: 09/05/2015 23:45	OCA #: 150015196

VICTIM STATES THAT THERE WERE TWO UNKNOWN MALE INDIVIDUALS GETTING INTO HIS WIFE'S FACE BEING AGGRESSIVE AND ATTEMPTING TO PUSH HER BACKWARDS WITH THERE CHEST. HE THEN STEPPED IN FRONT OF HER AND UNKNOWN SUBJECT 1 STRUCK HIM IN THE FACE AND A PHYSICAL ALTERCATION ENSUED BETWEEN A CROWD OF PEOPLE. DURING THE ALTERCATION, HE STATES THAT SUBJECT 2 (BRENT) THEN GRAB HIM AROUND HIS NECK AND NOT LETTING HIM GO. WHILE HE WAS GETTING HELD BY BRENT, HE STATES THAT SUBJECT 3 (AARON) STRUCK HIM IN THE FACE SEVERAL TIMES. VICTIM STATED THAT THE WILD WING BOUNCERS BROKE THE ALTERCATION UP BETWEEN THE CROWD AND ESCORTED HIM OUTSIDE THE BUILDING. R/O OBSERVED THE VICTIMS RIGHT EYE TO BE SWOLLEN, AND RED, A SMALL LACERATION ON THE TOP OF HIS NOSE, AND A SMALL LACERATION ABOVE HIS RIGHT EYE.

WITNESS 1 (JONI) STATED THAT THE ALTERCATION OCCURRED AT THE FRONT OF THE STAGE AREA INSIDE THE BUSINESS. JONI STATES THAT AN UNKNOWN MALE WAS IN FRONT OF THE VICTIMS WIFE FACING HER AND THEY WERE CONVERSATING BUT COULD NOT TELL WHAT WAS BEING SAID. RICHARD THEN GOT IN BETWEEN THEM AND THE UNKNOWN SUBJECT 1 STRUCK HIM IN THE FACE AND A LARGE ALTERCATION ENSUED BETWEEN MULTIPLE PEOPLE. JONI OBSERVED BRENT HOLDING RICHARD AROUND HIS NECK AND NOT LETTING GO. JONI TOLD HIM THAT HIS FACE WAS BLEEDING AND TO GET OFF OF HIM BUT HE REFUSED TO LET HIM GO AND THEN AARON STRUCK RICHARD IN THE FACE MULTIPLE TIMES AND THEN SECURITY BROKE UP THE ALTERCATION.

SUBJECT 2 (BRENT) TOLD R/O THAT HE WAS SECURITY FOR THE BAND THAT WAS PLAYING AT THE INCIDENT LOCATION AND OBSERVED RICHARDS WIFE INVOLVED WITH A VERBAL ALTERCATION WITH A FEW UNKNOWN MALES. THEN HE STATED THAT A PHYSICAL ALTERCATION ENSUED INVOLVING SEVERAL INDIVIDUALS INCLUDING RICHARD AND HIS WIFE. BRENT TOLD R/O THAT THE ALTERCATION STARTED TO WORK ITS WAY CLOSER TO THE STAGE AREA WHEN THE BAND WAS AT AND HE TRIED TO BREAK UP THE ALTERCATION BUT FAILED TO DO SO. BRENT STATED THAT RICHARD ATTEMPTED TO CONTINUE TO FIGHT OTHER INDIVIDUALS. BRENT THEN GRABBED RICHARD AROUND HIS NECK AND ARM WITH HIS ARM AND HOLD HIM BACK SINCE HE BELIEVED HE WAS BEING AN AGGRESSOR. RICHARD THEN GRABBED A BOTTLE OFF OF A TABLE AND ATTEMPTED TO STRIKE HIM WITH IT. BRENT STATED THAT HE RELEASED RICHARD WHEN WILD WINGS SECURITY ARRIVED TO BREAK THE ALTERCATION UP.

WITNESS 3 (COLBY) STATED THAT HE OBSERVED A LARGE SCUFFLE INVOLVING MULTIPLE PEOPLE AND OBSERVED BRENT HOLDING RICHARD AROUND HIS NECK AND ARM WITH THE ATTEMPT TO RESTRAINING HIM BUT WITH NO INTENTIONS ON TRYING TO HURT HIM IN ANY WAY. COLBY ALSO TOLD R/O THAT BRENT LET GO OF RICHARD AS SOON AS WILD WING SECURITY ARRIVED AND HE WAS ONLY DOING HIS JOB AS SECURITY FOR THE BAND DUE TO WHERE THE ALTERCATION WAS TAKING PLACE AT THE STAGE AREA.

SUBJECT 3 (AARON) TOLD R/O THAT HE OBSERVED THE ALTERCATION AND SCUFFLE AND THEN OBSERVED BRENT RESTRAINING RICHARD AND STEPPED IN AND ASKED IF BRENT WAS OK. R/O ATTEMPTED TO ASK AARON SEVERAL TIMES WHAT ELSE OCCURRED AND WHAT HIS INVOLVEMENT WAS HE TOLD R/O SEVERAL TIMES THAT HE DOESNT REMEMBER ANYTHING AFTER ASKING BRENT IF HE WAS OK.

WITNESS 2 (JEFF) STATED THAT HE OBSERVED RICHARDS WIFE INVOLVED IN A VERBAL ALTERCATION (THE AGGRESSOR) WITH ANOTHER UNKNOWN INDIVIDUALS AND OBSERVED RICHARD CONFRONTING THE UNKNOWN INDIVIDUAL AND THEN THE ALTERCATION ENSUED. STATED THAT HE DID NOT SEE AARON STRIKE ANYBODY AND STATED THAT AARON AT ONE POINT WAS ATTEMPTING TO BREAK THE ALTERCATION UP.

R/O OBSERVED RICHARD BLEEDING FROM THE RIGHT SIDE OF HIS FACE, OBSERVED BLOOD ON THE FRONT OF BRENTS PANTS, AND OBSERVED BLOOD ON AARONS HANDS. R/O SPOKE TO MULTIPLE PEOPLE WHO STATED THAT RICHARDS WIFE, AND HIM INSTIGATED THE ALTERCATION AND R/O WAS ALSO TOLD BY MULTIPLE PEOPLE THAT SUBJECT 1 INSTIGATED THE ALTERCATION AND STRUCK RICHARD FIRST. R/O WAS ALSO INFORMED THAT THE ALTERCATION APPEARED TO BE MUTUAL COMBATANTS. R/O ATTEMPTED TO GET SEVERAL PEOPLES INFORMATION FOR THIS REPORT BUT TOLD R/O THAT THEY DID NOT WANT TO BE A PART OF THIS REPORT. RICHARD IS CLAIMING THAT AARON ASSAULTED HIM WHILE BRENT WAS HOLDING HIM AND THAT BRENT ASSAULTED HIM BY PLACING HIS ARM AROUND HIS NECK. RICHARDS STATES THAT IT WAS UNWARRANTED.

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Exhibit 2
Motion to Reconsider

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COURT OF COMMON PLEAS FOR THE
STATE OF SOUTH CAROLINA
FOR THE COUNTY OF RICHLAND
THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CIVIL ACTION NO.:
Vista Wings, LLC d/b/a	)	2016-CP-40-07109
Wild Wings Cafe - Columbia,	)	
Brent Weston, and Aaron	)	
Miller,	)	
	)	
Defendant.	)	
	)	

DEPOSITION OF: CHRIS SEIPLE

DATE: Friday, October 6, 2017

TIME: At 9:34 A.M.

LOCATION: LAW OFFICES OF:
Sweeny Wingate & Barrow
1515 Lady Street
Columbia, SC 29201

TAKEN BY: Counsel for the Defendant

REPORTED BY: Brittany Van Nort, Court
Reporter and Notary Public

1 were about to go down, and you saw him grab Ricky?

2 A. I seen him grab Ricky when I -- I
3 grabbed the guy. He grabbed Ricky. He could have
4 been very well being like me and keeping the stuff
5 from escalating.

6 Q. Gotcha. But then next thing you know,
7 you get --

8 A. I'm -- I'm away.

9 Q. And after that it's fair to say it's
10 hard for you to recollect anything else that went
11 on around you?

12 A. Right.

13 Q. Okay. And do you recall if your sister
14 was put in handcuffs for any reason that night?

15 A. I don't know. I want to say maybe a
16 cop was talking with her, but I don't know if she
17 was put in cuffs.

18 Q. Okay. That's all I got.

19 CROSS-EXAMINATION

20 BY MR. MANN:

21 Q. Chris, I have a couple questions for
22 you. The gentleman that was sitting on top of the
23 booth in front of you, did he appear to be
24 intoxicated to you?

25 A. Oh, severely.

1 **Q. Severely intoxicated?**

2 A. Yes. Words slurring, very loud,
3 obnoxious. He is -- he was loud in front of us
4 before we even asked him to sit down, because he
5 was -- we couldn't even hear the music because he
6 was sitting there loud with a couple of his friends
7 right there.

8 **Q. Do you know if he was being served**
9 **drinks by Wild Wing that night?**

10 A. I mean I'm going to assume yes.

11 **Q. Did you see a waitress come and go from**
12 **his table?**

13 A. Of course.

14 **Q. Did you see them bring any drinks to**
15 **the table that night?**

16 A. I mean I guess I didn't really pay
17 attention to whether drinks were coming there, but
18 I did see server coming.

19 **Q. Okay. Anybody else in that group**
20 **appear to be intoxicated?**

21 A. The guy that was sitting beside him was
22 definitely intoxicated. He -- I mean I could pick
23 him out. He was a pretty muscular guy, military
24 type looking. I want to say he wasn't originally
25 in the group. He just kept walking over, and I

Exhibit 3
Motion to Reconsider

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT
3
4 RICHARD A. FINAN,) C.A. NO.: 2016-CP-40-07109
5)
6 Plaintiff,)
7)
8 V.) Deposition of
9 VISTA WINGS, LLC d/b/a WILD) JONI WILLIAMSON
10 WINGS CAFÉ - COLUMBIA, BRENT) August 3, 2017
11 WESTON, AND AARON MILLER,)
12)
13 Defendants.)
14 _____)
15

16 Deposition on oral examination of JONI WILLIAMSON,
17 reported by Lisa F. Huffman, Court Reporter and Notary
18 Public in and for the State of South Carolina; said
19 deposition taken pursuant to notice of deposition, by
20 agreement and in accordance with South Carolina Rules of
21 Civil Procedure, at Rogers Lewis Jackson Mann & Quinn,
22 LLC, 1901 Main Street, Suite 1200, Columbia, South
23 Carolina, on August 3, 2017, at the hour of 12:33 p.m.
24
25

1 **Q. Start from the beginning.**

2 A. Okay. We went that night to go hear Ricky Young
3 sing, who I also went to school with who I'm also
4 friends with, so it makes it a little difficult.
5 I've known this Ricky, obviously, longer than I've
6 known Ricky Young. Anyway, we went out, me and
7 Daisy and Jacob. I had refused to let them be
8 involved because at the time they were in my
9 consideration to be minors, so I didn't feel their
10 statement was necessary. So we went out. We ate.
11 We watched the band a while, and as we were going
12 to leave we saw Ricky, Richard Finan, and Amber and
13 his brother-in-law, Chris, and his wife Stephanie.
14 We just saw them as we were leaving.

15 **Q. And you know them as well?**

16 A. Yes, yes.

17 **Q. Grew up with all of them?**

18 A. Well, I grew up with Mr. Finan, but not with
19 everybody else. We're related to them -- well,
20 we're not related to them. We're related to their
21 cousins. So it -- we're always together, all of us
22 --

23 **Q. You know, they say in South Carolina everybody is**
24 **related.**

25 A. Everybody is always related. So, anyway, we were

1 going to leave and we saw them, so we stopped to
2 talk a while. And we were just kind of talking,
3 you know, like, hey, what you been up to, you know,
4 whatever. And come to find out, they had won
5 this little thing and they were in this booth to
6 watch the concert, so they were there just like we
7 were. And Mr. Finan and I were talking, and we
8 were all just kind of hanging out and was -- we
9 were having a good time. And somebody said
10 something to his wife. I'm not exactly sure what
11 happened, because we were just kind of talking. He
12 says, "Hang on a second, let me see what's going
13 on." So he walks over and says, "Hey, are you
14 talking to my wife?" Or what are you saying to my
15 wife or something. But it was loud, so you
16 couldn't really hear. And the next thing I know he
17 gets punched. And I thought what in the world is
18 happening, like what's going on. So I immediately
19 turn to my children and I said get in the booth.
20 Now, they're 16 and 18 at the time, so they weren't
21 like children.

22 **Q. Who's the 18, Daisy?**

23 **A.** Daisy. Yeah, because she was -- either she was
24 just about to be 18 -- no, she had to have been 18.

25 **Q. This is a couple of years ago.**

1 A. Yeah, she --

2 Q. Is she 19 now?

3 A. She will be 20, so she was about to be 18 then.
4 But, see, we get our name on the door a lot of
5 times to come see Ricky Young because we're
6 friends. And I'll send him a message, hey, put our
7 name on the door, and he will. So that's how I get
8 them into places all the time. But, anyway, this
9 was actually Jacob's first outing with us to go see
10 Ricky sing. So I pushed them back in the booth. I
11 turn around, and by the time I turn around Mr.
12 Finan was in a headlock and -- somebody had him in
13 a headlock and some other guy was punching him and
14 it just -- it went crazy from there. And I was
15 screaming, "Please let him go. He's bleeding."
16 And he was bleeding everywhere. I said, "Please
17 let him go. Please let him go. If you let him go,
18 I'll take him out of the bar." I just kept saying,
19 "If you let him go I will take him out of the bar."
20 And the guy said, "I'm not letting him go." And I
21 said, "You got to -- he's bleeding all over the
22 place. You have to let him go." And he just kept
23 hollering to me, "I'm not letting him go." So hope
24 I don't get charged with anything. I started
25 grabbing whatever I could to throw at this fellow

1 to let him go, because Ricky's face was so red and
2 so blue from them holding him he couldn't breathe,
3 and I was just throwing whatever: bottles, cups,
4 whatever I had in my hands to let him go. Because
5 I knew if I got him away from him that I could take
6 him outside and everything would be fine. And so
7 we went out. After everything got crazy and cops -
8 - I guess cops were in. I'm not sure if the cops
9 came in or not, but we all went outside eventually.
10 And a cop did take my son back inside to identify
11 the man. Because one guy was holding Ricky and one
12 guy was punching him. There were two. They were
13 tag teaming up on him. Now, I don't know what was
14 going on with Chris. A bunch of them jumped on
15 him, but he's a big old guy, so I don't care about
16 what was going on with him. I was caring about
17 Ricky because he was standing in front of me, and
18 that's what I was looking at.

19 **Q. Sure.**

20 **A.** So my son goes back inside with the cop to find the
21 guy that was punching him, because he was wearing a
22 flannel shirt. And they came back out with Ricky's
23 sunglasses that he lost and the flannel shirt that
24 was on the ground. The guy had peeled his shirt
25 off and bailed. I don't know even know who these

1 people are, so.

2 **Q. So the guy that was holding him and the guy that**
3 **was punching him, you never saw them again?**

4 A. Yeah, I've seen him a lot through the years. I'm
5 fairly positive, and I feel like that's him, but
6 are you Brent?

7 MR. WESTON: Uh-huh.

8 THE WITNESS: Yeah. Because you go with
9 Ricky Young a lot, right?

10 MR. WESTON: Yeah, he's one of my best
11 friends.

12 A. Yeah. But, I mean, so I know it was him because
13 I've been to several of these concerts. And, like
14 I said, I feel bad because I know everybody.

15 **Q. Sure.**

16 A. But it was complete chaos.

17 **Q. The other guy that was punching Ricky, have you**
18 **seen him since?**

19 A. No. I don't know who he was.

20 **Q. Has anyone told you that any of these people were**
21 **employed with Wild Wings?**

22 A. No, I don't know who they were with.

23 **Q. Right.**

24 A. I've just seen him at several of Ricky Young's
25 concerts. That's how I know him. That's how I

Exhibit 4
Motion to Reconsider

1 Q. You mean showing that you didn't have any marks on
2 your hands indicating you had --

3 A. Been an aggressor, that's correct.

4 Q. Well, I mean, you still could have punched someone
5 and not had a mark on your hand, couldn't you?

6 MR. BLAKE: Object to the form.

7 A. Doubtfully.

8 Q. So that's the purpose of that; is that correct?

9 A. That's correct.

10 Q. Number 2 shows the injuries to your face.

11 A. Yeah.

12 Q. And it looks mostly to your right eye. I see some
13 other marks, but that looks to be the most
14 dramatic; is that correct?

15 A. My eye?

16 Q. Yeah, your right eye.

17 A. It looks to be the worst part, yeah.

18 Q. Now, you got a little band-aid above that. Did
19 that require stitches?

20 A. I don't remember if I got stitches or not.

21 Q. I don't see a scar on your --

22 A. There is a scar. It's covered by eyebrow.

23 Q. Do you know if that scar was there before this
24 incident?

25 A. No, it was not.

- 1 Q. So you don't know if you got stitches?
- 2 A. I don't recall.
- 3 Q. Who would have put the stitches in?
- 4 A. It probably would have been Doctors Care. That's
- 5 who I first went to. But I think they just put
- 6 steri-strips on it.
- 7 Q. Number 3 looks like your right hand; is that right?
- 8 A. Yeah.
- 9 Q. Now, it looks like there are a couple abrasions on
- 10 two knuckles. Am I missing something?
- 11 A. No.
- 12 Q. Is that two abrasions on your knuckles?
- 13 A. No.
- 14 Q. You don't think that is? They're red marks.
- 15 A. I don't think so.
- 16 Q. These are not red marks?
- 17 A. They're slightly redder than the rest of my hand.
- 18 Q. Right. And how did that happen?
- 19 A. I don't know.
- 20 Q. Did you land a punch with your right hand?
- 21 A. I did not.
- 22 Q. What's the ring signify? What is that? Is that S?
- 23 A. It's a Superman ring.
- 24 Q. On number 4 you made a fist; is that right?
- 25 A. That's correct.

- 1 Q. And what's the purpose of that photo?
- 2 A. Just showing my fist and knuckle showing that
- 3 they're not busted, bloody or anything like that.
- 4 Q. Number 5 it looks like that's a mark to your back?
- 5 A. It's an abrasion on my back.
- 6 Q. Do you remember when she took these, in terms of
- 7 the incident? Was it that day, that night, the
- 8 next day?
- 9 A. I believe it may have been the next day.
- 10 Q. And why did you have her take these photographs?
- 11 A. I had her take the photographs as evidence in case
- 12 I wanted to file charges against these people. I
- 13 wanted to have some sort of evidence or proof as to
- 14 what happened.
- 15 Q. Sure. Or bring a lawsuit, right?
- 16 A. It wasn't my intentions at the time, no.
- 17 Q. Number 6, your left knuckles. That's again to show
- 18 that you didn't have any abrasions on them?
- 19 A. That's correct.
- 20 Q. Number 7, your left hand?
- 21 A. Yes.
- 22 Q. The same reason?
- 23 A. Yes, sir.
- 24 Q. Eight is a photograph of mostly on the right side
- 25 of your face; is that correct?

- 1 A. Yes, sir.
- 2 Q. Nine, what are we looking at here? Why did you
- 3 take this one?
- 4 A. My neck.
- 5 Q. And what does that show us?
- 6 A. The bruising on my neck from being strangled.
- 7 Q. Did you ever pass out or get unconscious as a
- 8 result of --
- 9 A. Nearly.
- 10 Q. But I mean either you did or didn't. That's my
- 11 question.
- 12 A. Nearly. I almost passed out.
- 13 Q. Nearly, meaning you did not?
- 14 A. I did not.
- 15 Q. Okay. Number 10, what are we looking at here?
- 16 A. My neck.
- 17 Q. Number 11?
- 18 A. Neck and chin.
- 19 Q. Same thing. Number 12, what are we looking at?
- 20 A. My back.
- 21 Q. That's on the right side of your back?
- 22 A. That's correct.
- 23 Q. Same thing on 13, correct?
- 24 A. Yes, sir.
- 25 Q. Fourteen is your chest right below your left

Exhibit 5
Motion to Reconsider

2

Verizon LTE

1:46 PM



June 6, 2015

10:26 AM

Details



PHOTOS 019



Appellants Memo 0051

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

5

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June 6, 2015

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Details



PHOTOS.022



Appellants Memo 0052

Handwritten mark resembling a stylized 'P' or 'Q' inside a circle.



June 6, 2015
1:56 AM

Details



PHOTOS 025



Appellants Memo 0053

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

11

Verizon LTE

1:45 PM



June 6, 2015

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Details



PHOTOS 028



Appellants Memo 0054

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

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1:45 PM



(12)



June 6, 2015

1:59 AM

Details



PHOTOS 029



Appellants Memo 0055

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109



June 6, 2015
1:59 AM

Details

13



PHOTOS 030



Appellants Memo 0056

Exhibit 6
Motion to Reconsider

CENTA Medical Group

(803) 256-2483

157 Corley Mill Rd., Lexington

Lexington, SC 29072-7600

Patient: Richard A Finan**Date of Birth:** 01/17/1978**SSN (last 4 #):** 5407**Visit Date:** 06/11/2015**Attending Provider:** Frank C. Hill MD**Referring Provider:** Janel Randolph PA-C**Patient Visit Note****Chief Complaint**

The Chief Complaint is: On call work-in Poss. orbital fx-tastes blood when he breathes in
J Randolph NP.

Reason For Visit

Visit for: assaulted 6 days ago and blurry vision in the right eye since. No double vision. No antibiotics.

Referred Here

Doctor's care.

History of Present Illness

- No fever.
- No sinus pain.
- Drip or drainage down throat from above, bloody
- No hearing loss in both ears
- No bilateral earache
- No previous history of discharge from both ears
- No nasal stuffiness
- No hoarseness
- No breathy hoarseness
- Not breaking
- No weak voice
- No sore throat
- No cough
- No difficulty swallowing
- Your ability to smell is normal
- Foods do not taste unusual

Past Medical/Surgical History**Reported:**

No recent change in medical history.

Current Medication

Medication list reviewed.

Social History

Behavioral: Cigarette smoking.

Alcohol: Alcohol.

Drug Use: Not using drugs.

Marital: You are currently married.

Family History

Family history unchanged

Review Of Systems

Encounter Background Information: The review of systems has not changed.

Systemic: Not feeling poorly (malaise). No fever and no recent weight change.

Head: Headache and sinus pain.

Neck: Neck pain. No lump or swelling in the neck.

CENTA Medical Group
157 Corley Mill Rd.
Lexington
Lexington, SC 29072-7600
(803) 256-2483

The following prescription(s) for Richard A Finan have been electronically forwarded to your pharmacy. Please pick up your prescription at:

CVS/pharmacy #3850
7749 Garners Ferry Rd

Columbia, SC 29209
Phone (803) 776-6605

Prescription

Amoxicillin 500MG CAPS				
Patient Instructions 1 po bid				
Quantity 14	Units tablet	Days Supp 7	Refills 0	Generic Allowed YES

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

Patient Copy - Not Valid For Dispensing.

Appellants Memo 0059

◦ General condition was unknown. ◦ Odor of breath was normal. ◦ No drooling was observed.

Lips: ◦ Showed no abnormalities.

Frenum Attachment: ◦ Showed no abnormalities.

Gums: ◦ Examination showed no abnormalities.

Teeth: ◦ Dental no abnormalities.

Buccal Mucosa: ◦ Examination showed no abnormalities.

Tongue: ◦ Examination showed no abnormalities.

Mouth Floor: ◦ Floor of the mouth showed no abnormalities.

Salivary Glands: ◦ Examination showed no abnormalities.

Palate: ◦ Hard palate was normal. ◦ Not cleft.

Retromolar Trigone: ◦ Showed no abnormalities.

Pharynx:

Nasopharynx: ◦ Not examined by mirror. ◦ Not examined by fiberoptic scope.
◦ Adenoids were not hypertrophied.

Oropharynx: ◦ Soft palate was normal. ◦ Uvula showed no abnormalities. ◦ Base of the tongue was normal. ◦ Tonsils showed no abnormalities. ◦ Posterior pharyngeal wall was normal.

Lymph Nodes:

◦ No lymph node enlargement.

Musculoskeletal System:

Temporomandibular Joint:

General/bilateral: ◦ Jaw joint showed no abnormalities.

Neurological:

Cranial Nerves: • A trigeminal neuropathy was noted with decreased facial sensation in right V2 (side of nose, infraorbital area, upper lip). ◦ No peripheral facial nerve palsy (weak lower and upper face) was noted. ◦ No central facial weakness.

Psychiatric:

Mood: ◦ Normal.

Affect: ◦ Normal.

Skin:

◦ No lesions on the face.

Growth And Development:

Growth Parameters: ◦ Normal.

Some hyposthesia on the right side.

CT

Right blow out fracture through lamina papyrecia, minimal orbital content herniation. No entrapment.

Assessment

• Closed skull fracture of orbital floor (blow-out), right without sequelae

Counseling/Education

• Education and instructions

Plan

• **Fracture of orbital floor, init encntr for closed fracture**

FOLLOW UP: as needed

Amoxicillin 500 MG CAPS, 1 po bid, 7 days, 0 refills

• Clinical summary provided to patient

Frank C. Hill MD

Electronically signed by: Frank Hill M.D. Date: 06/11/2015 15:09

Eyes: No itching of the eyes. Eye pain.
Otolaryngeal: No hearing loss, no earache, and no ringing in the ears. Nosebleeds. No hoarseness and no sore throat.
Cardiovascular: No chest pain or discomfort.
Pulmonary: No difficulty breathing, no cough, and no wheezing.
Gastrointestinal: Appetite not decreased. No difficulty swallowing, no difficulty swallowing, and no heartburn.
Genitourinary: No pain during urination.
Hematologic: No easy bleeding and no tendency for easy bruising.
Neurological: No spinning dizziness, no lightheadedness, your ability to smell is normal, the corner of the mouth does not droop, and foods do not taste unusual.
Psychological: No depression and no sleep disturbances.
Skin: No rash.
Social: Smoking status: Current everyday smoker.

Physical Findings• **Vitals taken 06/11/2015 02:17 pm**

BP-Sitting L	118/78 mmHg	100 -
120/60 - 80		
Temp-Tympanic	98.5 F	96 - 101
Height	69 in	65 - 75
Weight	164 lbs	125 - 225
Body Mass Index	24.2 kg/m2	
Body Surface Area	1.90 m2	

Neurological:

◦ Corner of the mouth does not droop.

Head:

Scar: ◦ No scar on the head except small lac in right eyebrow.

Neck:

Appearance: ◦ Of the neck was normal.

Palpation: ◦ No tenderness of the neck.

Trachea: ◦ Showed no abnormalities.

Cervical Mass: ◦ No cervical mass was seen.

Eyes:**General/bilateral:**

Extraocular Movements: ◦ Normal.

Anterior Orbit / Periorbit: • Swelling around the right eye. • Periorbital ecchymosis. No enophthalmos.

External: ◦ Tissue around the eyeball exhibited no abnormalities.

Nose:**General/bilateral:**

Discharge: ◦ No nose bleeds were seen.

Nasal Malformation: ◦ No nasal malformation.

External Deformities: ◦ No external nose deformities.

Cavity: • Deviated nasal septum. • Nasal mucosa bleeding. ◦ Nasal mucosa was moist. ◦ Nasal mucosa not edematous. ◦ Nasal mucosa not red. ◦ Nasal mucosa no crusts/sores. ◦ No intranasal polyp. ◦ No intranasal mucocele. ◦ No intranasal neoplasm.

Sinus Tenderness: ◦ No tenderness of maxillary sinus. ◦ No ethmoidal sinus tenderness. ◦ No frontal sinus tenderness.

Upper Airway:

◦ No stridor was observed.

Obstructions:

Obstructions: ◦ Airway was patent.

Oral Cavity:

Exhibit 7
Motion to Reconsider

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RICHARD A. FINAN,

Plaintiff,

v.

VISTA WINGS, LLC d/b/a WILD
WING CAFÉ—COLUMBIA, THE
VISTA; BRENT WESTON; and
AARON MILLER.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.:

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO VISTA
WINGS, LLC d/b/a WILD WING
CAFÉ—COLUMBIA, THE VISTA**

**TO: THE DEFENDANT VISTA WINGS, LLC d/b/a WILD WING CAFÉ—COLUMBIA,
THE VISTA:**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff hereby serves upon Vista Wings, LLC d/b/a Wild Wing Café—Columbia, The Vista, the following written First Set of Interrogatories to be answered separately and in writing within the time allowed under the Rules after the service of these Interrogatories:

DEFINITIONS

A. The terms "YOU", "YOUR", or "WILD WING CAFE", mean Vista Wings, LLC d/b/a Wild Wing Café—Columbia, The Vista and its agents, representatives, or other individuals who work or act on behalf of it either directly or indirectly.

B. The term "PERSON" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, an LLC, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

C. The term "DOCUMENT" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means, including all "ESI". The term "document" includes, but is not limited to, all records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices.

The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

D. The term "ELECTRONICALLY STORED INFORMATION" ("ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage or stored either via a remote system, back-up system, hard drive or tape of any kind.

1. The term "metadata" is used in these discovery requests to include information embedded in a "native file" that is not ordinarily viewable or printable from the application that generated, edited, or modified such "native file"; and information generated automatically by the operation of a computer or other information technology system when "native file" is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

2. The term "native file(s)" and/or "native form" means "ESI" in the electronic format of the application in which such "ESI" is normally created, viewed and/or modified.

3. "Static Image(s)" means a representation of "ESI" produced by converting a "native file" into a standard image format capable of being viewed and printed on standard computer systems. In the absence of agreement of the parties or order of Court, a "static image" should be provided in Portable Document Format (PDF). If load files were created in the process of converting "native files" to "static images", or if load files may be created without undue burden or cost, load files should be produced together with "static images".

E. The phrase "possession, custody or control" means a "document" or "ESI" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document or ESI on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document or ESI on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document or ESI.

F. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory.

G. References to the singular include the plural, and references to the plural include the singular.

H. The past verb tense includes the present verb tense, and the present verb tense includes the past tense.

I. The "PREMISES" means the real property located at 729 LADY STREET, COLUMBIA, SC 29201.

J. A DOCUMENT or ESI that "RELATES TO" any given subject means any document or ESI that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents or ESI concerning the preparation of other documents or ESI.

K. The "INCIDENT" refers to June 5, 2015 when the Plaintiff was physically assaulted at the PREMISES.

INSTRUCTIONS

A. When the phrase "DESCRIBE IN DETAIL" or "SPECIFICALLY STATE" is employed in these interrogatories, please supply a full description and narrative account of the act, transaction, relationship, thing, or occurrence inquired into, and include references to the dates, places, and persons involved as well as disposition of the matter, if applicable.

B. When the term "IDENTIFY" is used in these interrogatories, please supply the following information as the context requires:

1. When "IDENTIFY" is used with reference to a natural person, please state his or her full name, present or last known address and telephone number, email address, and present or last known position or business affiliation;

2. When "IDENTIFY" is used with respect to any other entity, please state its full name, the address of its principal place of business, and the names of its principals;

3. When "IDENTIFY" is used with respect to a document or ESI, please state the name or title of the document or ESI, the type of document or ESI (e.g., letter, memorandum, telegram, chart, etc.), its date, the person(s) to whom it was addressed, and the person(s) to whom it was sent. If any such document or ESI was but is no longer in your possession or subject to your control, state what disposition was made of it, and explain the circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date thereof; and

4. When "IDENTIFY" is used with respect to any non-written communication, please identify the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner, and place of the communication, and the substance of the communication.

C. Pursuant to the South Carolina Rules of Civil Procedure and law, these Requests shall be deemed continuing so as to require supplemental responses prior to trial.

D. If any information is withheld by you based upon a claim that it is privileged or subject to protection as trial preparation material, provide a separate privilege log separately describing the nature of each document, ESI, communication, or thing not produced or disclosed by you.

E. Unless otherwise stated, the applicable time period for each interrogatory below is from **June 1, 2010 to present**.

RULE 33(B) STANDARD INTERROGATORIES

1. Give the names and addresses of PERSONS known to you to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each PERSON known to you to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches, or other prepared DOCUMENTS and/or ESI in your possession that relate to the claim or defense in this case.

4. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved, the amount or amounts of liability coverage provided in each policy.

5. Set forth an itemized statement of all damages claimed to have been sustained by YOU in your counterclaim, if any.

6. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

7. If WILD WING CAFE is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

GENERAL INTERROGATORIES

8. IDENTIFY all members of Vista Wings, LLC, managing or otherwise, from January 1, 2010 until the present, and state his or her percent of ownership interest.

9. IDENTIFY each employee, servant or agent of YOU that entered upon the PREMISES and acted as either a bartender, a server, or a security employee or contract laborer on the day and night of June 5, 2015 along with each PERSON'S respective role on that night.

10. DESCRIBE IN DETAIL all policies or procedures that bartending employees are expected to abide by in the performance of their duties.

11. SPECIFICALLY STATE any and all training or instruction that YOU provide bartenders or servers pertaining to the service of alcoholic beverages.

12. IDENTIFY all lawsuits in which WILD WING CAFÉ was a named party in the past five years.

13. DESCRIBE IN DETAIL any and all terminations or adverse employment actions taken against a bartender or server of WILD WING CAFÉ in the last five years which relate in any manner to the over-service of alcohol to any individual or the service of alcohol to an intoxicated individual, including the name of the bartender or server and the date of the termination or adverse employment action.

14. DESCRIBE IN DETAIL any and all terminations or adverse employment actions taken against any security employee, contractor or personnel of WILD WING CAFÉ in the last five years and the circumstances surrounding each respective termination or adverse employment action, including the name of the security employee, contractor or personnel and the date of the termination or adverse employment action.

15. Give the names of each PERSON who was performing work at the PREMISES in a bartending and/or security capacity on the night of June 5, 2015, who hired, trained or supervised those individuals, and DESCRIBE IN DETAIL the results of any criminal background check or other investigation you performed to determine their qualifications to perform the work.

16. SPECIFICALLY STATE the date, parties involved and circumstances surrounding any instance of the police responding to a disturbance at WILD WING CAFÉ in the last three years.

17. IDENTIFY each insurance claim YOU have made in connection with any personal injury occurring on the PREMISES in the last five years.

18. DESCRIBE IN DETAIL the facts surrounding any relationship (including any parent/subsidiary, contractual, member/shareholder, joint venture, sister/affiliate, master/servant, principal/agent, joint, shared, or common ownership) between YOU and either:

- a) any of the Defendants named in this action; and
- b) any PERSON identified in Interrogatory number 1.

19. IDENTIFY each PERSON responsible for the implementation of YOUR policies and procedures that relate to bartending employees, security of the premises, or music events on the PREMISES.

20. Did the INCIDENT on June 5, 2015 result in any sort of internal incident report at WILD WING CAFÉ?

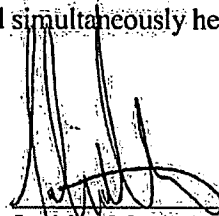
21. IDENTIFY all communications or DOCUMENTS exchanged between YOU and BRENT WESTON or AARON MILLER.

22. Do YOU contend that any other Defendant in this action contributed to the INCIDENT? If so, DESCRIBE IN DETAIL the factual basis of YOUR contention.

23. IDENTIFY all communications or DOCUMENTS exchanged between YOU and any governmental or regulatory body that relate to the INCIDENT.

24. IDENTIFY YOUR net profits in 2011, 2012, 2013, 2014, and 2015.

25. IDENTIFY the names of all persons who assisted in responding to these interrogatories or the requests for production served simultaneously herewith.



Jenkins M. Mann

Shaun C. Blake

Colton Driver

ROGERS LEWIS JACKSON MANN & QUINN, LLC

1330 Lady St., Suite 400

Columbia, SC 29201

Tel.: (803) 256-1268

Fax: (803) 252-3653

Email: jmann@rogerslewis.com

sblake@rogerslewis.com

cdriver@rogerslewis.com

December 1, 2016
Columbia, SC

Attorneys for Plaintiff

Exhibit 8
Motion to Reconsider

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

RICHARD A. FINAN,

CIVIL ACTION NO.:

Plaintiff,

v.

VISTA WINGS, LLC d/b/a WILD
WING CAFÉ—COLUMBIA, THE
VISTA; BRENT WESTON; and
AARON MILLER.

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
VISTA WINGS, LLC d/b/a WILD
WING CAFÉ—COLUMBIA, THE
VISTA**

Defendants.

**TO: DEFENDANT VISTA WINGS, LLC d/b/a WILD WING CAFÉ—COLUMBIA, THE
VISTA:**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff hereby serves upon each of the Defendants above named the following written First Set of Requests for Production to be answered separately and in writing within the time allowed under the Rules after the service of these Requests:

DEFINITIONS

A. The terms "YOU" or "YOUR" means the Defendant named herein for and on behalf of whom the answers below are provided, including its agents, representatives, or other individuals who work or act on behalf of it either directly or indirectly.

B. The term "PERSON" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

C. The term "DOCUMENT" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, digitized produced or reproduced by any means, including all "ESI". The term "document" includes, but is not limited to, all records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, text messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information

is recorded or transmitted, including, but not limited to, photographs, videotapes, digital video or audio files, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

D. The term "ELECTRONICALLY STORED INFORMATION" ("ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored or transmitted, including but not limited to YOUR social media activity on Facebook or any other outlet in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage or stored either via a remote system, back-up system, hard drive or tape of any kind.

1. The term "metadata" is used in these discovery requests to include information embedded in a "native file" that is not ordinarily viewable or printable from the application that generated, edited, or modified such "native file"; and information generated automatically by the operation of a computer or other information technology system when "native file" is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

2. The term "native file(s)" and/or "native form" means "ESI" in the electronic format of the application in which such "ESI" is normally created, viewed and/or modified.

3. "Static Image(s)" means a representation of "ESI" produced by converting a "native file" into a standard image format capable of being viewed and printed on standard computer systems. In the absence of agreement of the parties or order of Court, a "static image" should be provided in either Tagged Image File Format (TIFF, or .TIF files) or Portable Document Format (PDF). If load files were created in the process of converting "native files" to "static images", or if load files may be created without undue burden or cost, load files should be produced together with "static images".

E. The phrase "possession, custody or control" means a "document" or "ESI" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document or ESI on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document or ESI on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document or ESI.

F. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

G. References to the singular include the plural, and references to the plural include the

singular;

H. The past verb tense includes the present verb tense, and the present verb tense includes the past tense.

I. The "PREMISES" means the real property located at 729 Lady Street, Columbia, SC 29201.

J. A DOCUMENT or ESI that "RELATES TO" any given subject means any document or ESI that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents or ESI concerning the preparation of other documents or ESI.

K. The "INCIDENT" means Plaintiff's June 5, 2015 injuries via assault at the PREMISES.

L. The term "COMPLAINT" refers to the Complaint clocked in by the Richland County Clerk of Court on December 1, 2016.

M. The term "WITNESS STATEMENT" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any PERSON who is identified by any person as a witness to the case or who YOU reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

INSTRUCTIONS

A. Pursuant to the South Carolina Rules of Civil Procedure and law, these Requests shall be deemed continuing so as to require supplemental responses prior to trial.

B. If any information is withheld by YOU based upon a claim that it is privileged or subject to protection as trial preparation material, identify each DOCUMENT, communication, or thing not produced or disclosed by YOU by name, date, type, and number of pages in a privilege log to be served along with these responses, including enough information about each in the privilege log to enable the PLAINTIFF to determine the nature of privilege(s) YOU claim for each DOCUMENT, communication, or thing.

C. Unless stated otherwise below, the applicable timeframe for the requested materials is for those items created, modified, transmitted, or stored from January 1, 2010 to present.

D. If a Defendant chooses to respond to these requests jointly with one more other Defendant, and the response is not intended to be made by all Defendants, specifically identify the response of each Defendant to the request.

REQUESTS FOR PRODUCTION

1. All DOCUMENTS or tangible things identified, alluded to, or listed in YOUR responses to any party's interrogatories or requests for production of documents.
2. All DOCUMENTS YOU reviewed, referenced, or relied upon in order to respond to any discovery requests.
3. All DOCUMENTS or tangible things that YOU may mark as an exhibit, introduce into evidence, or which YOU may otherwise rely on in the trial of this case or any deposition in this case.
4. All DOCUMENTS or tangible things created by, reviewed by, or relied upon by any of YOUR expert witnesses, whether or not the DOCUMENT or tangible thing will be used at trial, including all drafts of any expert report created by that expert witness in analyzing any aspect of the allegations contained in the COMPLAINT.
5. All DOCUMENTS that RELATE TO lay WITNESS STATEMENTS or other writings summarizing or containing statements made by YOU, made to YOU, or received by YOU from a source, excluding those DOCUMENTS produced to YOU by PLAINTIFF solely during the course of discovery in this action, including taped or recorded conversations with any person, written witness notes, or recorded WITNESS STATEMENTS that relate to the matters referenced in the COMPLAINT.
6. All DOCUMENTS and AGREEMENTS exchanged between YOU and any other Defendant in this action.
7. All DOCUMENTS that constitute all or a portion of any AGREEMENT between YOU and any other Defendant in this action, including a copy of any checks written to any Defendant in this action for services rendered.
8. Any DOCUMENT serving as an internal incident report for any assaults or assault-related offenses on the PREMISES for the five years leading up to the incident.
9. A current curriculum vitae for any expert witness YOU intend to provide testimony or use for trial.
10. All insurance policies RELATED TO, or which may provide coverage, to YOU or any other Defendant for the matters alleged in this action.
11. All DOCUMENTS RELATED TO the hiring, retention or supervision of each PERSON hired, retained, supervised or otherwise engaged, by YOU or any third party, to perform security or bartending work at the PREMISES.
12. All DOCUMENTS RELATING TO any background checks, reference checks or other employment screens you performed, for PERSONS hired, retained, supervised or otherwise

engaged, by YOU or any third party, to perform work at the PREMISES on the night of June 5, 2015.

13. All DOCUMENTS RELATED TO YOUR policies and procedures for the hiring, retention or supervision of PERSONS at the PREMISES.

14. Any policies or procedures specifically RELATED TO bartending or security work for YOU.

15. Any employee handbook provided to your bartenders, servers, and/or security personnel.

16. All DOCUMENTS RELATED TO any claim of personal injury on the PREMISES in the last five years.

17. All DOCUMENTS RELATED TO the relationship (including any parent/subsidiary, contractual, member/shareholder, joint venture, sister/affiliate, master/servant, principal/agent, joint, shared, or common ownership) between YOU and any of the Defendants named in this action.

18. All DOCUMENTS RELATED TO any complaint, grievance, police report, citation, fine, reprimand, or lawsuit that YOU have received or know of regarding assaults on the PREMISES in the past 10 years.

19. All DOCUMENTS which you contend demonstrate or evidence that any other Defendant in this action contributed to the INCIDENT.

20. All DOCUMENTS that constitute YOUR articles of incorporation or articles of organization and any amendments thereto.

21. All DOCUMENTS that constitute YOUR operating agreement and any amendments thereto.

22. All DOCUMENTS constituting or RELATED TO your tax returns for the years 2011, 2012, 2013, 2014, and 2015.

23. All DOCUMENTS that demonstrate or RELATE TO your assets and liabilities for the years 2011, 2012, 2013, 2014, and 2015, including any balance sheets.

24. All DOCUMENTS that demonstrate or RELATE TO your statement of cash flow for the years 2011, 2012, 2013, 2014, and 2015.

25. All DOCUMENTS that demonstrate or RELATE TO YOUR profit and loss statement for the years 2011, 2012, 2013, 2014, and 2015.

26. All DOCUMENTS constituting any K-1 issued to YOUR members for 2011, 2012, 2013, 2014, and 2015.

27. All DOCUMENTS relating to any litigation hold implemented by YOU in response to the INCIDENT.

28. All DOCUMENTS that RELATE TO any communications between YOU and your insurance company as a result of the INCIDENT.

29. All DOCUMENTS that RELATE TO any communications or exchanges between YOU and any expert witness that YOU expect to call as a witness for trial.

30. All DOCUMENTS that RELATE to the ownership or lease of any property that YOU occupy.

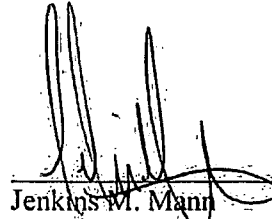
31. All DOCUMENTS that RELATE TO any lawsuits, charges, arrests, regulatory actions, licensing actions, governmental or administrative complaints, or other civil or criminal allegations or proceedings against YOU from January 1, 2005 to present.

32. All DOCUMENTS listing the directors and/or officers of any Defendant that is a limited liability company.

33. All DOCUMENTS that YOU contend depict YOUR compliance with the corporate formalities for any Defendant that is a limited liability company.

34. All DOCUMENTS that show or RELATES TO the compensation, including salaries, bonuses, incentive pay, and benefits paid to YOU or YOUR employees, officers, and directors.

35. All DOCUMENTS, receipts, or other records of purchases on the night of the INCIDENT in the name of the PLAINTIFF or of any DEFENDANT.



Jenkins W. Mann
Shaun C. Blake

ROGERS LEWIS JACKSON MANN & QUINN, LLC
1330 Lady St., Suite 400
Columbia, SC 29201
Tel.: (803) 256-1268
Fax: (803) 252-3653
Email: jmann@rogerslewis.com
sblake@rogerslewis.com

Attorneys for Plaintiff

December 1
October, 2016
Columbia, SC

Exhibit 9
Motion to Reconsider

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2016-CP-40-07109



SLW2016000152

Plaintiff:

Richard A. Finan

vs.

Defendant:

Vista Wings, LLC, d/b/a Wild Wing Cafe - Columbia, Brent Weston, and Aaron Miller

For: Rogers Lewis Jackson Mann & Quinn, LLC

Received by Carolina Investigative Associates, LLC to be served on **Vista Wings, Llc D/B/A Wild Wing Cafe - Columbia**
Registered Agent, CT Corporation System, 2 Office Park Court, Columbia, SC 29223. I, Greg Jones, being duly sworn, depose and say that on the 6th day of December, 2016 at 2:50 p.m., executed service by delivering a true copy of the **Civil Action Coversheet; Summons; Complaint; Plaintiff's First Set of Requests For Production To Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, The Vista; Plaintiff's First Set of Interrogatories to Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, The Vista;** in accordance with state statutes in the manner marked below:

☒ **CORPORATE SERVICE:** By serving (Name of person served) Pam Johnson (Title of person served) Assistant Secretary, who is authorized to accept service on behalf of the above referenced entity/individual.

☐ **NON SERVICE:** For the reason detailed in the Comments below.

COMMENTS: _____

Age 50 Sex M ☒ Race White Height 5'4" Weight 160 Hair Brown Glasses Y ☒

AFFIDAVIT OF SERVICE For 2016-CP-40-07109

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 6
day of December, 2016 by the affiant who
is personally known to me.

Michael R. Roakes
NOTARY PUBLIC

My Commission expires: 4-25-17

STAMP/SEAL

[Signature]
PROCESS SERVER # _____
Appointed in accordance with State Statutes.

Carolina Investigative Associates, LLC
1643 B Savannah Hwy.
#138
Charleston, SC 29407
(843) 595-4627

Our Job Serial Number: 2016000152

Exhibit 10
Motion to Reconsider

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109

Plaintiff,

v.

Vista Wings, LLC dba Wild Wings
Cafe - Columbia, Brent Weston, and
Aaron Miller

Defendant.

DEFENDANT VISTA WINGS, LLC DBA
WILD WING CAFÉ'S ANSWERS TO
PLAINTIFF'S INTERROGATORIES

TO: JENKINS MANN, ESQUIRE, SHAUN BLAKE, ESQUIRE, AND COLTON
DRIVER, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE
PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute
the Defendant Vista Wings, LLC d/b/a Wild Wing Café's Answers to Interrogatories propounded
by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as
obtained.

1. Give the names and addresses of persons known to the parties or counsel to be
witnesses concerning the facts of the case and indicate whether or not written or recorded statements
have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

**Wild Wing Café Representative
c/o Sweeny, Wingate & Barrow**

Wild Wing Cafe is named as a Defendant in this case. A representative(s) will be
identified to testify as to the facts and circumstances surrounding the incident.

Brent Weston
Address Unknown

Mr. Weston is a named defendant in this case. He is expected to testify as to the facts and circumstances surrounding the accident.

Aaron Miller
Address Unknown

Mr. Miller is a named defendant in this case. He is expected to testify as to the facts and circumstances surrounding the accident.

Richard Finan
Address Unknown

Mr. Finan is the Plaintiff in this case. He is expected to testify as to the facts and circumstances surrounding the accident.

Bradley Johnson
c/o Sweeny, Wingate & Barrow, P.A.

Mr. Johnson is an employee of Defendant and was a bartender on the night of the incident that is the subject of the Complaint. Defendant is in possession of a written statement by Mr. Johnson.

Santanna Griffin

Mr. Griffin is an employee of Defendant and was a manager on the night of the incident that is the subject of the Complaint. Defendant is in possession of a written statement by Mr. Griffin.

Defendants reserve the right to call as a witness, fact or expert, any other witness named by any other party to this case, whether withdrawn or not.

2. For each person known to the parties or counsel to be witnesses concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory Number 1 above.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

**Employee Statements (3)
Cincinnati Insurance Policy
Vista Wings Articles of Incorporation
Lease Documents and Amendments
Bar Training Manual
Wild Wing Café Employee Handbook
Wild Wing Café Orientation Book
Wild Wing Café Server Training Materials
Wild Wing Café Train the Trainer Materials
Bartender Personnel Files**

4. Set forth the names and addresses of all insurance companies which have liability insurance coverages relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage in each policy.

ANSWER:

**The Cincinnati Specialty Underwriters Insurance Company
6200 S. Gilmore Road, Fairfield OH 45014
Policy Number: CSU0067621
Liability Coverage: \$1,000,000.00 per occurrence**

5. Set forth an itemized statement of all damages claimed to have been sustained by YOU in your counterclaim, if any.

ANSWER: Defendant has not asserted a counterclaim.

6. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

ANSWER: Defendant has not yet identified an expert witness to use at the trial of this case but will supplement this response as discovery progresses and at such time as an appropriate decision on expert witnesses can be made.

7. If the Wild Wing Cafe is improperly identified, give the proper identification and state whether Counsel will accept service of an amended summons and pleadings reflecting the correct information.

ANSWER: Defendant is properly identified.

8. Identify all members of Vista Wings, LLC, managing or otherwise, from January 1, 2010 until the present, and state his or her percent.

ANSWER: Defendant objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence.

9. Identify each employee, servant or agent of you that entered upon the premises and acted as either a bartender, a server, or a security employee or contract laborer on the day and night of June 5, 2015 along with each person's respective role on that night.

ANSWER:

Bartenders - Sara Boyer, James Bryan, Seth Franklin, Bradley Johnson, Alexandria Wilden

Door Staff - Marsden Cox, Taylor Hedgepath, Nicholas Packett

Servers - Haley Bennett, Frankie Caldwell, Cera Falls, Lauren Hedrick, Bree Keisler, Ashley Lombardo, Katherine Reeves, Donald Williams, Taylor Wolfrey

Hosts - Danielle DuPre, Lauren Mulligan, Beghan Paulo

Kitchen - Letitia Klines, Lorenzo Mitchell, Henry Robinson, Rome Washington, Darin White

Food Runner - Antoine Jacques, Tyler Micieli

Expeditor - Chadwick Palmer

Managers on Duty - Santanna Griffin, John Harper

10. Describe in detail all policies or procedures that bartending employees are expected to abide by in the performance of their duties.

ANSWER: Wild Wing Café Bar Facts Manual and Employee Handbook.

11. Specifically state any and all training or instruction that you provide bartenders or servers pertaining to the service of alcoholic beverages.

ANSWER: Wild Wing Café Bar Facts Manual.

12. Identify all lawsuits in which Wild Wing Café was a named party in the past five years.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Additionally, Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence.

13. Describe in detail any and all terminations or adverse employment actions taken against a bartender or server of Wild Wing Café in the last five years which relate in any manner to the over-service of alcohol to any individual or the service of alcohol to an intoxicated individual, including the name of the bartender or server and the date of the termination or adverse employment action.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Additionally, Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence.

14. Describe in detail any and all terminations or adverse employment actions taken against any security employee, contractor or personnel of Wild Wing Café in the last five years and the circumstances surrounding each respective termination or adverse employment action, including

the name of the security employee, contractor or personnel and the date of the termination or adverse employment action.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Additionally, Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence.

15. Give the names of each person who was performing work at the premises in a bartending and/or security capacity on the night of June 5, 2015, who hired, trained or supervised those individuals, and describe in detail the results of any criminal background check or other investigation you performed to determine their qualifications to perform the work.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Subject to and without waiving any objections, Defendant has identified these individuals and will provide the personnel files of the bartenders on duty that night upon entry of a confidentiality order, a proposed copy of which is being sent along with these responses.

Bartenders - Sara Boyer, James Bryan, Seth Franklin, Bradley Johnson, Alexandria Wilden

Door Staff - Marsden Cox, Taylor Hedgepath, Nicholas Packett

16. Specifically state the date, parties involved and circumstances surrounding any instance of the police responding to a disturbance at Wild Wing Café in the last three years.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Additionally, Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to

and without waiving any objections, the police responded to the event that is the subject of this accident.

17. Identify each insurance claim you have made in connection with any personal injury occurring on the premises in the last five years.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad in time and scope. Additionally, Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence.

18. Describe in detail the facts surrounding any relationship (including any parent/subsidiary, contractual, member/shareholder, joint venture, sister/affiliate, master/servant, principal/agent, joint, shared, or common ownership) between you and either:

- a) Any of the Defendants named in this action; and
- b) Any person identified in Interrogatory number 1.

ANSWER:

(a) Neither Brent Weston nor Aaron Miller had any type of relationship with Vista Wings dba Wild Wing Café beyond that of patrons.

(b) See Answer to Interrogatory # 1.

19. Identify each person responsible for the implementation of your policies and procedures that relate to bartending employees, security of the premises, or music events on the premises.

ANSWER: The managers on duty that night were responsible for implementing all Wild Wing Café policies and procedures. The managers were Santanna Griffin and John Harper.

20. Did the incident on June 5, 2015 result in any sort of internal incident report at Wild Wing Café?

ANSWER: Upon information and belief, no.

21. Identify all communications or documents exchanged between you and Brent Weston or Aaron Miller.

ANSWER: None.

22. Do you contend that any other Defendant in this action contributed to the incident? If so, describe in detail the factual basis of your contention.

ANSWER: Defendant objects to the extent this Interrogatory calls for mental impressions and legal conclusions of counsel. Subject to and without waiving any objections, yes. Defendants Weston and Miller were involved in the altercation with Plaintiff.

23. Identify all communications or documents exchanged between you and any government or regulatory body that relate to the incident.

ANSWER: Upon information and belief, none.

24. Identify your net profits in 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant objects to this Request on the basis that it is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

25. Identify the names of all persons who assisted in responding to these interrogatories or the requests for production served simultaneously herewith.

ANSWER: Ela Casuga.

*****Signature Page to Follow*****

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Ryan C. Holt
William H. Yarborough, Jr.
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

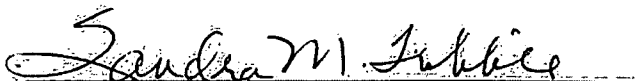
March 8, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Answers to Interrogatories in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Post Office Box 11803
Columbia, South Carolina 29211

Attorney for Plaintiff Richard A. Finan


Sandra M. Tribble

Columbia, South Carolina

March 8, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109

Plaintiff,

v.

Vista Wings, LLC dba Wild Wings
Cafe - Columbia, Brent Weston, and
Aaron Miller

Defendants.

DEFENDANT VISTA WINGS, LLC DBA
WILD WINGS CAFÉ'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION

TO: JENKINS MANN, ESQUIRE, SHAUN BLAKE, ESQUIRE, AND COLTON DRIVER, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC d/b/a Wild Wing Café's Response to Request for Production propounded by Plaintiff.

These responses are continuing in nature and additional information will be supplied as obtained.

1. All documents or tangible things identified, alluded to, or listed in your responses to any party's interrogatories or requests for production of documents.

ANSWER: See WWC 000001 through 000301.

2. All documents you reviewed, referenced, or relied upon in order to respond to any discovery requests.

ANSWER: See Response to Request Number 1 above.

3. All documents or tangible things that you may mark as an exhibit, introduce into evidence, or which you may otherwise rely on in the trial of this case or any deposition in this case.

ANSWER: Defendant objects to this Request to the extent that it seeks legal impressions and mental conclusions of counsel. Subject to and without waiving any objections, Defendant has not yet determined what evidence it intends to introduce at the trial of this case or at any deposition.

4. All documents or tangible things created by, reviewed by, or relied upon by any of your expert witnesses, whether or not the document or tangible thing will be used at trial, including all drafts of any expert report created by that expert witness in analyzing any aspect of the allegations contained in the complaint.

ANSWER: Defendant has not yet identified an expert witness to use at the trial of this case but will supplement this response as discovery progresses and at such time as an appropriate decision on expert witnesses can be made.

5. All documents that relate to lay witness statements or other writings summarizing or containing statements made by you, made to you, or received by you from a source, excluding those documents produced to you by plaintiff solely during the course of discovery in this action, including taped or recorded conversations with any person, written witness notes, or recorded witness statements that relate to the matters referenced in the complaint.

ANSWER: See WWC 000001 through 000003.

6. All documents and agreements exchanged between you and any other Defendant in this action.

ANSWER: None.

7. All documents that constitute all or a portion of any agreement between you and any other Defendant in this action, including a copy of any checks written to any Defendant in this action.

ANSWER: None.

8. Any document serving as an internal incident report for any assaults or assault-related offenses on the premises for the five years leading up to the incident.

ANSWER: Defendant objects to this Request on the basis that it is overly broad in time and scope. Subject to and without waiving any objections, upon information and belief, the incident at issue in this case did not give rise to an incident report.

9. A current curriculum vita for any expert witness you intend to provide testimony or use for trial.

ANSWER: Defendant has not yet identified an expert witness to use at the trial of this case but will supplement this response as discovery progresses and at such time as an appropriate decision on expert witnesses can be made.

10. All insurance policies related to, or which may provide coverage, to you or any other Defendant for the matters alleged in this action.

ANSWER: See WWC 000004 through 000120.

11. All documents related to the hiring, retention or supervision of each person hired, retained, supervised or otherwise engaged, by you or any third party, to perform security or bartending work on the premises.

ANSWER: Defendant objects on the basis that this Request is overly broad in time and scope. Subject to and without waiving any objections, Defendant will produce bartender personnel files upon entry of a confidentiality order in this case. A draft Confidentiality order is being submitted with these Responses.

12. All documents relating to any background checks, reference checks or other employment screens you performed, for persons hired, retained, supervised or otherwise engaged by you or any third party, to perform work at the premises on the night of June 5, 2015.

ANSWER: Defendant objects on the basis that this Request is overly broad in time and scope. Subject to and without waiving any objections, Defendant will produce bartender personnel files upon entry of a confidentiality order in this case. A draft Confidentiality order is being submitted with these Responses.

13. All documents related to your policies and procedures for the hiring, retention or supervision of persons at the premises.

ANSWER: Defendant objects on the basis that this Request is overly broad in time and scope. Subject to and without waiving any objections, Defendant will produce bartender personnel files upon entry of a confidentiality order in this case. A draft Confidentiality order is being submitted with these Responses.

14. Any policies or procedures specifically related to bartending or security work for you.

ANSWER: See WWC 000155 through 000216.

15. Any employee handbook provided to your bartenders, servers, and/or security personnel.

ANSWER: See WWC 000155 through 000282.

16. All documents related to any claim of personal injury on the premises in the last five years.

ANSWER: Defendant objects to this Request on the basis that it is overly broad in time and scope. Defendants additionally object on the basis that this Request is not reasonably calculated to lead to the discovery of admissible evidence.

17. All documents related to the relationship (including any parent/subsidiary, contractual, member/shareholder, joint venture, sister/affiliate, master/servant, principal/agent, joint, shared, or common ownership) between you and any of the Defendants named in this action.

ANSWER: Defendant is working to obtain copies of receipts for transactions, if any, the other named Defendants made on the night of the incident. Receipts are the documents reflecting any type of relationship Defendants Miller and Weston had with Defendant Wild Wing Café as they were patrons.

18. All documents related to any complaint, grievance, police report, citation, fine, reprimand, or lawsuit that you have received or know of regarding assaults on the premises in the past 10 years.

ANSWER: Defendant objects to this Request on the basis that it is overly broad in time and scope. Defendants additionally object on the basis that this Request is not reasonably calculated to lead to the discovery of admissible evidence.

19. All documents which you contend demonstrate or evidence that any other Defendant in this action contributed to the incident.

ANSWER: Defendant is not in possession or control of documents responsive to this Request.

20. All documents that constitute your articles of incorporation or articles of organization and any amendments thereto.

ANSWER: See WWC 000121 through 000123.

21. All documents that constitute your operating agreement and any amendments thereto.

ANSWER: Defendant will produce the operating agreement upon entry of a confidentiality order. A draft confidentiality order is being submitted with these Responses.

22. All documents constituting or related to your tax returns for the years 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

23. All documents that demonstrate or relate to your assets and liabilities for the years 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant USF Holland, LLC objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

24. All documents that demonstrate or relate to your statement of cash flow for the years 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

25. All documents that demonstrate or relate to your profit and loss statement for the years 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

26. All documents constituting any K-1 issued to your members for 2011, 2012, 2013, 2014, and 2015.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of

admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

27. All documents relating to any litigation hold implemented by you in response to the incident.

ANSWER: Defendants object on the basis that, on its face, this Request seeks information prepared in anticipation of litigation and protected pursuant to Rule 26.

28. All documents that relate to any communications between you and your insurance company as a result of the incident.

ANSWER: See Response to Request Number 27 above. Subject to and without waiving any objections, see WWC 000004 through 000010.

29. All documents that relate to any communications or exchanges between you and any expert witness that you expect to call as a witness for trial.

ANSWER: Defendant has not yet identified an expert witness to use at the trial of this case but will supplement this response as discovery progresses and at such time as an appropriate decision on expert witnesses can be made.

30. All documents that relate to the ownership or lease of any property that you occupy.

ANSWER: See WWC 000124 through 000154.

31. All documents that relate to any lawsuits, charges, arrests, regulatory actions, licensing actions, governmental or administrative complaints, or other civil or criminal allegations or proceedings against you from January 1, 2005 to present.

ANSWER: Defendant objects to this Request on the basis that it is overly broad in time and scope. Defendants additionally object on the basis that this Request is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, the Judicial Indices in the counties where Defendant is located may have information related to lawsuits and specific regulatory agencies may likewise have responsive information. The requested information is more easily obtained via these sources than through Defendant, to which the request is unduly burdensome.

32. All documents listing the directors and/or officers of any Defendant that is a limited liability company.

ANSWER: Defendant objects on the basis that this Request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant is producing Vista Wings' Articles of Incorporation. See WWC 00121 through 00123. At this time, Vista Wings is requesting additional documents from the South Carolina Secretary of State and will produce those upon receipt.

33. All documents that you contend depict your compliance with the corporate formalities for any Defendant that is a limited liability company.

ANSWER: Defendant objects on the basis that this Request is not reasonably calculated to lead to the discovery of admissible evidence

34. All documents that show or relates to the compensation, including salaries, bonuses, incentive pay, and benefits paid to you or your employees, officers, and directors.

ANSWER: Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of

admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

35. All documents, receipts, or other records of purchases on the night of the incident in the name of the Plaintiff or of any Defendant.

ANSWER: Defendant is still working to gather this information and will supplement this Request when it becomes available.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
Ryan C. Holt
William H. Yarborough, Jr.
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANTS

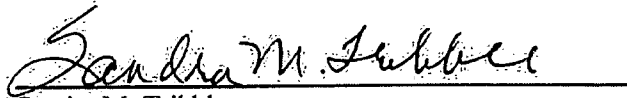
Columbia, South Carolina

March 8, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Responses to Requests for Production in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Post Office Box 11803
Columbia, South Carolina 29211
Attorney for Plaintiff Richard A. Finan


Sandra M. Tribble

Columbia, South Carolina

March 8, 2017

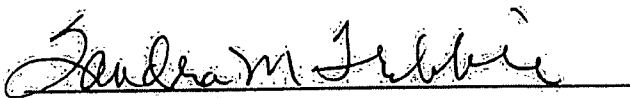
Exhibit 11
Motion to Reconsider

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendant Wild Wing Café, do hereby certify that I have served a copy of the foregoing Supplemental Responses to Requests for Production in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Post Office Box 11803
Columbia, South Carolina 29211
Attorneys for Plaintiff

Christopher Pracht, Esquire
Thomason & Pracht, LLP
Post Office Box 4025
303 E. Greenville Street
Anderson, South Carolina
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

March 15, 2017

Exhibit 12
Motion to Reconsider



SWEENY WINGATE & BARROW P.A.

September 11, 2017

Reply to: Main Office

William H. Yarborough, Jr.
(803) 256-2233 x7102
why@swblaw.com

Jenkins M. Mann, Esquire
Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201

RE: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, Brent
Weston, and Aaron Miller
Civil Action No.: 2016-CP-40-07109
Our File: 1395-10793

Dear Counsel:

Enclosed and hereby served upon you are the following documents in the above-referenced case:

1. Defendant Wild Wing Café's Supplemental Answers to Plaintiff's Interrogatories
2. Defendant Wild Wing Café's Second Supplemental Responses to Plaintiff's Requests for Production
3. Discovery Verification.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to be 'W. Yarborough, Jr.', is written over a circular stamp or seal.

William H. Yarborough, Jr.

WHY/smt
Enclosures

cc: J. Christopher Pracht, V, Esquire, Thomason & Pracht, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Richard A. Finan	)	Civil Action No.: 2016-CP-40-07109
	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT VISTA WINGS, LLC DBA
	)	WILD WING CAFÉ'S SUPPLEMENTAL
Vista Wings, LLC dba Wild Wings	)	ANSWERS TO PLAINTIFF'S
Cafe - Columbia, Brent Weston, and	)	INTERROGATORIES
Aaron Miller	)	
	)	
Defendants.	)	

TO: JENKINS MANN, ESQUIRE, SHAUN BLAKE, ESQUIRE, AND COLTON DRIVER, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute the Defendant Vista Wings, LLC d/b/a Wild Wing Café's Supplemental Answers to Interrogatories propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as obtained.

13. Describe in detail any and all terminations or adverse employment actions taken against a bartender or server of Wild Wing Café in the last five years which relate in any manner to the over-service of alcohol to any individual or the service of alcohol to an intoxicated individual, including the name of the bartender or server and the date of the termination or adverse employment action.

SUPPLEMENTAL ANSWER: None.

14. Describe in detail any and all terminations or adverse employment actions taken against any security employee, contractor or personnel of Wild Wing Café in the last five years and the circumstances surrounding each respective termination or adverse employment action, including the name of the security employee, contractor or personnel and the date of the termination or adverse employment action.

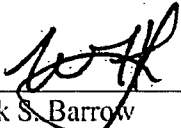
SUPPLEMENTAL ANSWER: Defendant maintains its objection that this Interrogatory is overly broad in time and scope. Subject to and without waiving any objections, no terminations or adverse actions have ever been taken against the door staff on duty the night of the incident previously identified by this Defendant.

16. Specifically state the date, parties involved and circumstances surrounding any instance of the police responding to a disturbance at Wild Wing Café in the last three years.

SUPPLEMENTAL ANSWER: Defendant only records and maintains internal incident reports. As a result, Defendant has no way of determining when or if police responded to a disturbance at the location.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Vista Wings, LLC dba Wild Wings
Cafe - Columbia

Columbia, South Carolina

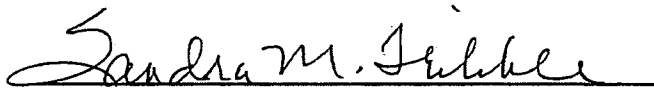
September 11, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants Wild Wings, do hereby certify that I have served a copy of the foregoing Supplemental Answers to Interrogatories in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Post Office Box 11803
Columbia, South Carolina 29211
cdriver@rogerslewis.com
Attorney for Plaintiff Richard A. Finan

J. Christopher Pracht, V, Esquire
Thomason & Pracht, LLC
303 East Greenville Street
Post Office Box 4025
Anderson, SC 29622
cp@tandplegal.com
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

September 11, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109

Plaintiff,)

v.)

Vista Wings, LLC dba Wild Wings
Cafe - Columbia, Brent Weston, and
Aaron Miller)

Defendants.)

DEFENDANT WILD WING CAFÉ'S
SECOND SUPPLEMENTAL RESPONSES
TO REQUESTS FOR PRODUCTION

TO: JENKINS MANN, ESQUIRE AND COLTON DRIVER, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC dba Wild Wing Café's First Supplemental Responses to Requests for Production.

8. Any document serving as an internal incident report for any assaults or assault-related offenses on the premises for the five years leading up to the incident.

SUPPLEMENTAL ANSWER: After extensively searching records of incident reports, none.

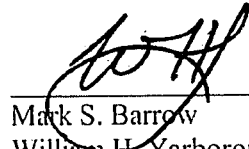
27. All documents relating to any litigation hold implemented by you in response to the incident.

SUPPLEMENTAL ANSWER: Defendants complied with the litigation hold but produced no documents related to such hold.

~Signature Page to Follow~

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANTS WILD
WING CAFÉ**

Columbia, South Carolina

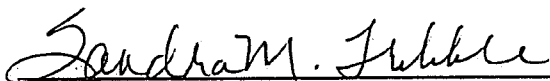
September 11, 2017

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendant Wild Wing Café, do hereby certify that I have served a copy of the foregoing Supplemental Responses to Requests for Production in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Colton Driver, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1330 Lady Street, Suite 400
Post Office Box 11803
Columbia, South Carolina 29211
Attorneys for Plaintiff

Christopher Pracht, Esquire
Thomason & Pracht, LLP
Post Office Box 4025
303 E. Greenville Street
Anderson, South Carolina
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

September 11, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Richard A. Finan	)	Civil Action No.: 2016-CP-40-07109
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DISCOVERY VERIFICATION
Vista Wings, LLC dba Wild Wings	)	
Cafe - Columbia, Brent Weston, and	)	
Aaron Miller	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Andy Johnson, Chief Financial Officer of Vista Wings, LLC, who, being duly sworn, deposes and says that he has read the following documents for Defendant Vista Wings, LLC:

- Answers to Interrogatories
- Supplemental Answers to Interrogatories
- Responses to Requests for Production
- First and Second Supplemental Responses to Request for Production
- Responses to Plaintiff's Second Requests for Production
- Supplemental Responses to Plaintiff's Second Requests for Production

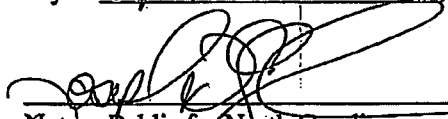
The same is true of his own information, knowledge and/or belief, except as to those matters alleged on information and belief, and as to those, he believes them to be true.

~Signature Page Follows~



Andy Johnson

SWORN to before me this 7th
day of September, 2017.



Notary Public for North Carolina
My Commission Expires: June 17, 2019

Charlotte, North Carolina

July 17, 2017

Exhibit 13
Motion to Reconsider



SWEENY WINGATE & BARROW P.A.

September 21, 2017

Reply to: Main Office

William H. Yarborough, Jr.
(803) 256-2233 x7102
why@swblaw.com

Colton Driver, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
Columbia, SC 29201

RE: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, Brent
Weston, and Aaron Miller
Civil Action No.: 2016-CP-40-07109
Our File: 1395-10793

Dear Counsel:

Enclosed and hereby served upon you are the following documents in the above-referenced case:

1. Defendant Wild Wing Café's Supplemental Answers to Plaintiff's Interrogatories
2. Defendant Wild Wing Café's Second Supplemental Responses to Plaintiff's Requests for Production
3. Discovery Verification

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read 'W. Yarborough, Jr.', is written over a circular stamp or seal.

William H. Yarborough, Jr.

WHY/smt
Enclosures

cc: J. Christopher Pracht, V, Esquire, Thomason & Pracht, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
	)	
Richard A. Finan	)	Civil Action No.: 2016-CP-40-07109
	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT VISTA WINGS, LLC DBA
	)	WILD WING CAFÉ'S SUPPLEMENTAL
Vista Wings, LLC dba Wild Wings	)	ANSWERS TO PLAINTIFF'S
Cafe - Columbia, Brent Weston, and	)	INTERROGATORIES
Aaron Miller	)	
	)	
Defendants.	)	

TO: JENKINS MANN, ESQUIRE, SHAUN BLAKE, ESQUIRE, AND COLTON DRIVER, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute the Defendant Vista Wings, LLC d/b/a Wild Wing Café's Supplemental Answers to Interrogatories propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as obtained.

13. Describe in detail any and all terminations or adverse employment actions taken against a bartender or server of Wild Wing Café in the last five years which relate in any manner to the over-service of alcohol to any individual or the service of alcohol to an intoxicated individual, including the name of the bartender or server and the date of the termination or adverse employment action.

SUPPLEMENTAL ANSWER: None.

14. Describe in detail any and all terminations or adverse employment actions taken against any security employee, contractor or personnel of Wild Wing Café in the last five years and the circumstances surrounding each respective termination or adverse employment action, including the name of the security employee, contractor or personnel and the date of the termination or adverse employment action.

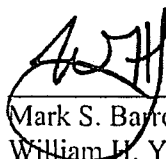
SUPPLEMENTAL ANSWER: Defendant maintains its objection that this Interrogatory is overly broad in time and scope. Subject to and without waiving any objections, no terminations or adverse actions have ever been taken against the door staff on duty the night of the incident previously identified by this Defendant.

16. Specifically state the date, parties involved and circumstances surrounding any instance of the police responding to a disturbance at Wild Wing Café in the last three years.

SUPPLEMENTAL ANSWER: Defendant only records and maintains internal incident reports. As a result, Defendant has no way of determining when or if police responded to a disturbance at the location.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Vista Wings, LLC dba Wild Wings
Cafe - Columbia

Columbia, South Carolina

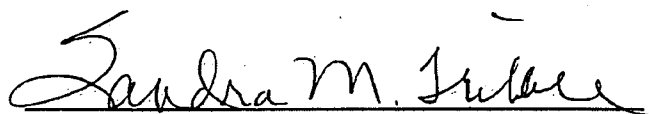
September 21, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants Wild Wings, do hereby certify that I have served a copy of the foregoing Supplemental Answers to Interrogatories in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Colton Driver, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
PO Box 11803 (29211)
Columbia, South Carolina 29211
cdriver@rogerslewis.com
Attorney for Plaintiff Richard A. Finan

J. Christopher Pracht, V, Esquire
Thomason & Pracht, LLC
303 East Greenville Street
Post Office Box 4025
Anderson, SC 29622
cp@tandplegal.com
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

September 21, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109

Plaintiff,

v.

Vista Wings, LLC dba Wild Wings
Cafe - Columbia, Brent Weston, and
Aaron Miller

Defendants.

DEFENDANT WILD WING CAFÉ'S
SECOND SUPPLEMENTAL RESPONSES
TO REQUESTS FOR PRODUCTION

**TO: JENKINS MANN, ESQUIRE AND COLTON DRIVER, ESQUIRE, ATTORNEYS
FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC dba Wild Wing Café's First Supplemental Responses to Requests for Production.

8. Any document serving as an internal incident report for any assaults or assault-related offenses on the premises for the five years leading up to the incident.

SUPPLEMENTAL ANSWER: After extensively searching records of incident reports, none.

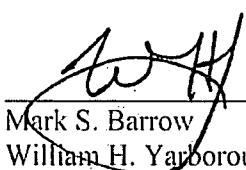
27. All documents relating to any litigation hold implemented by you in response to the incident.

SUPPLEMENTAL ANSWER: Defendants complied with the litigation hold but produced no documents related to such hold.

~Signature Page to Follow~

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANTS WILD
WING CAFÉ**

Columbia, South Carolina

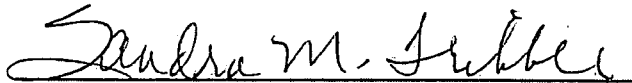
September 21, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendant Wild Wing Café, do hereby certify that I have served a copy of the foregoing Supplemental Responses to Requests for Production in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Colton Driver, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
PO Box 11803 (29211)
Columbia, South Carolina 29211
cdriver@rogerslewis.com
Attorney for Plaintiff Richard A. Finan

Christopher Pracht, Esquire
Thomason & Pracht, LLP
Post Office Box 4025
303 E. Greenville Street
Anderson, South Carolina
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

September 21, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109
))
))
))

Plaintiff,)
))
))

v.)
))
))

Vista Wings, LLC dba Wild Wings)
Cafe - Columbia, Brent Weston, and)
Aaron Miller)
))
))

DISCOVERY VERIFICATION

Defendants.)

PERSONALLY APPEARED BEFORE ME, Andy Johnson, Chief Financial Officer of Vista Wings, LLC, who, being duly sworn, deposes and says that he has read the following documents for Defendant Vista Wings, LLC:

- Answers to Interrogatories
- Supplemental Answers to Interrogatories
- Responses to Requests for Production
- First and Second Supplemental Responses to Request for Production
- Responses to Plaintiff's Second Requests for Production
- Supplemental Responses to Plaintiff's Second Requests for Production

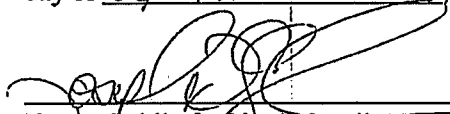
The same is true of his own information, knowledge and/or belief, except as to those matters alleged on information and belief, and as to those, he believes them to be true.

~Signature Page Follows~



Andy Johnson

SWORN to before me this 7th
day of September, 2017.



Notary Public for North Carolina
My Commission Expires: June 17, 2019

Charlotte, North Carolina

July 17, 2017

Exhibit 14
Motion to Reconsider

ROGERS LEWIS

ATTORNEYS AT LAW

Colton Driver
Direct Dial (803) 978-2835
cdriver@rogerslewis.com

October 6, 2017

Via US Mail

Mark S. Barrow
Sweeny Wingate & Barrow
1515 Lady Street
Columbia, SC 29201

Re: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Café—Columbia, Vista,
Brent Weston, and Aaron Miller
CA #: 2016-CP-40-07109

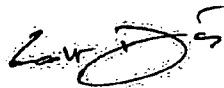
Dear Mark:

Please accept this letter as my attempt to communicate and resolve this matter in compliance with Rule 11, SCRCP. We served you with Plaintiff's Third Set of Requests for Production on or about August 2, 2017. We served you with Plaintiff's Fourth Set of Requests for Production and Second Interrogatories on or about August 16, 2017. As of today's date, we have not received any responses to either of those packets of discovery requests. Please get us responses to these items in the next five (5) business days so that we are able to complete discovery without filing any additional motions.

Should you have any questions, please contact our office.

With best regards, I am

Sincerely,



Colton Driver, Esq.

Cc: Ryan C. Holt
William H. Yarborough, Jr.

Exhibit 15
Motion to Reconsider



SWEENEY WINGATE & BARROW P.A.

November 1, 2017

Reply to: Main Office

William H. Yarborough, Jr.
(803) 256-2233 x7102
why@swblaw.com

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Rogers Lewis Jackson Mann & Quinn, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201

RE: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, Brent
Weston, and Aaron Miller
Civil Action No.: 2016-CP-40-07109
Our File: 1395-10793

Dear Counsel:

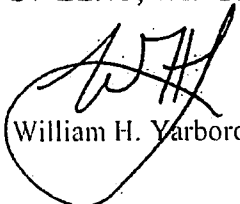
Enclosed and hereby served upon you are the following documents in the above-referenced case:

1. Defendant Wild Wing's Answers to Plaintiff's Second Interrogatories;
2. Defendant Wild Wing's Responses to Plaintiff's Third Request for Production;
3. Defendant Wild Wing's Responses to Plaintiff's Fourth Request for Production.

Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



William H. Yarborough, Jr.

WHY/smt

Enclosures

cc: J. Christopher Pracht, V, Esquire, Thomason & Pracht, LLC

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (20201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

Appellants Memo 0127

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109
Plaintiff,)
v.) DEFENDANT VISTA WINGS, LLC DBA
Vista Wings, LLC dba Wild Wings) WILD WING CAFÉ'S ANSWERS TO
Cafe - Columbia, Brent Weston, and) PLAINTIFF'S SECOND
Aaron Miller) INTERROGATORIES
Defendant.)

TO: JENKINS M. MANN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute
the Defendant Vista Wings, LLC d/b/a Wild Wing Café's Answers to Second Interrogatories
propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as
obtained.

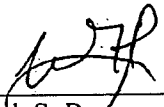
1. IDENTIFY the date YOU received Plaintiff's litigation hold letter and the date(s)
upon which YOU took actions related to such litigation hold. **Please note that this Interrogatory
is not asking for an protected work product information prepared in anticipation of litigation.**

ANSWER: Defendant is not aware of the specific date the letter was received but
ensured that all documents related to the incident were maintained.

*****Signature Page to Follow*****

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT WILD
WING CAFE**

Columbia, South Carolina

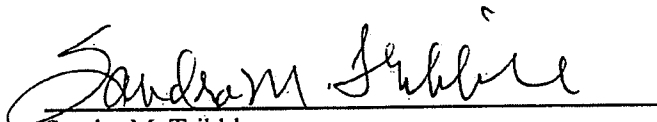
November 1, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Answers to Plaintiff's Second Interrogatories in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
P.O. Box 11803 (29211)
Columbia, SC 29201
Attorney for Plaintiff Richard A. Finan

J. Christopher Pracht, V, Esquire
Thomason & Pracht, LLC
303 East Greenville Street
Post Office Box 4025
Anderson, SC 29622
cp@tandplegal.com
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

November 1, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan) Civil Action No.: 2016-CP-40-07109
Plaintiff,)
v.) DEFENDANT VISTA WINGS, LLC DBA
WILD WINGS CAFÉ'S RESPONSES TO
Vista Wings, LLC dba Wild Wings) PLAINTIFF'S THIRD REQUESTS FOR
Cafe - Columbia, Brent Weston, and) PRODUCTION
Aaron Miller)
Defendants.)

**TO: JENKINS M. MANN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE-NAMED:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC d/b/a Wild Wing Café's Response to Third Request for Production propounded by Plaintiff.

These responses are continuing in nature and additional information will be supplied as obtained.

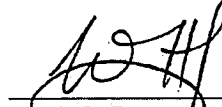
1. A copy of any DOCUMENT, whenever created, modified, transmitted, or stored, that YOU have regarding the hiring, retention, or any contract or agreement between YOU and the Ricky Young Band or any other musician that was playing at the PREMISES on the night of June 5, 2015.

RESPONSE: Defendant did not have any written agreement, contract or any other

type of documentation regard the hiring/retention to the Ricky Young Band on the night of the incident.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANTS WILD
WING CAFÉ**

Columbia, South Carolina

November 1, 2017

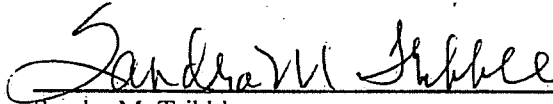
ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Responses to Plaintiff's Third Requests for Production in connection with the above-referenced case by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
P.O. Box 11803 (29211)
Columbia, SC 29201
Attorney for Plaintiff Richard A. Finan

J. Christopher Pracht, V, Esquire
Thomason & Pracht, LLC
303 East Greenville Street
Post Office Box 4025
Anderson, SC 29622
cp@tandplegal.com
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

August 8, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
Richard A. Finan	)	Civil Action No.: 2016-CP-40-07109
	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT VISTA WINGS, LLC DBA
	)	WILD WINGS CAFÉ'S RESPONSES TO
Vista Wings, LLC dba Wild Wings	)	PLAINTIFF'S FOURTH REQUESTS FOR
Cafe - Columbia, Brent Weston, and	)	PRODUCTION
Aaron Miller	)	
	)	
Defendants.	)	

TO: JENKINS M. MANN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC d/b/a Wild Wing Café's Response to Fourth Request for Production propounded by Plaintiff.

These responses are continuing in nature and additional information will be supplied as obtained.

1. A diagram of the PREMISES with all booth and table numbers labeled.

RESPONSE: See diagram previously produced.

2. All DOCUMENTS related to alcohol sales for the outside booths along the wall where the Plaintiff's booth was located on the night of the INCIDENT.

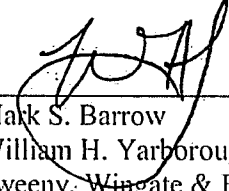
RESPONSE: Defendants have already produced for inspection and copying receipts for the night of the incident with this information. Defendants are producing previously identified itemized versions of receipts for tables 5 and 6.

3. All DOCUMENTS showing alcohol sales revenues for the PREMISES for the month of June, 2015.

RESPONSE: Defendants object to this Interrogatory as overly broad in time and scope. Alcohol sales revenues for nights leading up to the incident or after the incident are not reasonably calculated to lead to the discovery of admissible evidence. Defendants have already produced for inspection and copying receipts for the night of the incident which include a breakdown of food and alcohol sales.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Mark S. Barrow
William H. Yarborough, Jr.
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT WILD
WING CAFÉ**

Columbia, South Carolina

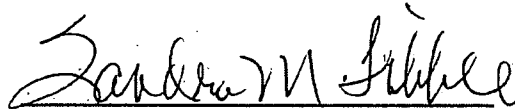
November 1, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Responses to Fourth Requests for Production in connection with the above-referenced case by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire
Shaun C. Blake, Esquire
Rogers Lewis Attorneys at Law
1901 Main Street, Suite 1200
P.O. Box 11803 (29211)
Columbia, SC 29201
Attorney for Plaintiff Richard A. Finan

J. Christopher Pracht, V, Esquire
Thomason & Pracht, LLC
303 East Greenville Street
Post Office Box 4025
Anderson, SC 29622
cp@tandplegal.com
Attorney for Defendant Brent Weston


Sandra M. Tribble

Columbia, South Carolina

November 1, 2017

Exhibit 16
Motion to Reconsider

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

SUBPOENA IN A CIVIL CASE

TO: AETIUS COMPANIES, LLC:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

PLACE: 1901 Main Street, Suite 1200
Columbia, SC 29201

DATE AND TIME: November 28, 2017
9:30 A.M.

DEFINITIONS OF TERMS USED IN THIS SUBPOENA

A. The term "you" refers to Aetius Companies, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Companies, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term “document” is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term “document” includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term “document” also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term “document” is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that “relates to,” is “related to” or is “relating to” any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase “possession, custody or control” means a “document” in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term “communication” is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase “witness statement” is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term “agreement” is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

DOCUMENTS SOUGHT IN THIS SUBPOENA

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
 - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
 - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
 - b. Brent Weston, believed to be at the premises on the night of the Incident;
 - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
 - d. Aaron Miller, believed to be at the premises on the night of the Incident;
 - e. Jeff Miller, believed to be at the premises on the night of the Incident;
 - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
 - g. Ricky Young, a performer who participated in the Event;
 - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
 - i. Richard A. Finan, the Plaintiff in this action
 - j. Amber Finan, who as at the premises on the night of the Incident;
 - k. Chris Seiple, who was at the premises on the night of the Incident;
 - l. Stephanie Seiple, who was at the premises on the night of the Incident;
 - m. Joni Williamson, who was at the premises on the night of the Incident;
 - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
 - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
 - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
 - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
 - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
 - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
 - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
 - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
 - w. SW&B, who represents Vista Wings in this Litigation; and
 - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
 - b. Brent Weston;
 - c. Aaron Miller;
 - d. Jeff Miller;
 - e. Colby Wielkie;
 - f. Ricky Young;
 - g. Amber Finan;
 - h. Chris Seiple;
 - i. Stephanie Seiple, who was at the premises on the night of the Incident;
 - j. Joni Williamson;
 - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)
Jenkins M. Mann, Esq. (S.C. Bar # 74894)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Tel: (803) 256-1268
Fax: (803) 252-3653
Email: sblake@rogerslewis.com
jmann@rogerslewis.com

ATTORNEYS FOR PLAINTIFF

November 14, 2017
Columbia, SC

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON	MANNER OF SERVICE	
SERVED BY	TITLE	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
 Executed on _____

 SIGNATURE OF SERVER

 ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

Richard A. Finan,

Plaintiff,

SUBPOENA IN A CIVIL CASE

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

TO: AETIUS FRANCHISING, LLC:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

PLACE: 1901 Main Street, Suite 1200
Columbia, SC 29201

DATE AND TIME: November 28, 2017
9:30 A.M.

DEFINITIONS OF TERMS USED IN THIS SUBPOENA

A. The term "you" refers to Aetius Franchising, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Franchising, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term “document” is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term “document” includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term “document” also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term “document” is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that “relates to,” is “related to” or is “relating to” any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase “possession, custody or control” means a “document” in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term “communication” is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase “witness statement” is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term “agreement” is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

DOCUMENTS SOUGHT IN THIS SUBPOENA

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

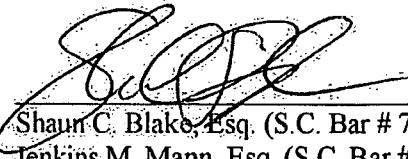
2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
 - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
 - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
 - b. Brent Weston, believed to be at the premises on the night of the Incident;
 - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
 - d. Aaron Miller, believed to be at the premises on the night of the Incident;
 - e. Jeff Miller, believed to be at the premises on the night of the Incident;
 - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
 - g. Ricky Young, a performer who participated in the Event;
 - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
 - i. Richard A. Finan, the Plaintiff in this action
 - j. Amber Finan, who as at the premises on the night of the Incident;
 - k. Chris Seiple, who was at the premises on the night of the Incident;
 - l. Stephanie Seiple, who was at the premises on the night of the Incident;
 - m. Joni Williamson, who was at the premises on the night of the Incident;
 - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
 - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
 - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
 - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
 - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
 - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
 - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
 - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
 - w. SW&B, who represents Vista Wings in this Litigation; and
 - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
 - b. Brent Weston;
 - c. Aaron Miller;
 - d. Jeff Miller;
 - e. Colby Wielkie;
 - f. Ricky Young;
 - g. Amber Finan;
 - h. Chris Seiple;
 - i. Stephanie Seiple, who was at the premises on the night of the Incident;
 - j. Joni Williamson;
 - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)

Jenkins M. Mann, Esq. (S.C. Bar # 74894)

ROGERS LEWIS JACKSON MANN & QUINN, LLC

1901 Main Street, Suite 1200

Columbia, SC 29201

Tel: (803) 256-1268

Fax: (803) 252-3653

Email: sblake@rogerslewis.com

jmann@rogerslewis.com

ATTORNEYS FOR PLAINTIFF

November 14, 2017
Columbia, SC

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

PROOF OF SERVICE

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SERVED ON	MANNER OF SERVICE	
SERVED BY	TITLE	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
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 SIGNATURE OF SERVER

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Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE No.: 2016-CP-40-07109

Richard A. Finan,
Plaintiff,

SUBPOENA IN A CIVIL CASE

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

TO: AETIUS RESTAURANT GROUP, LLC:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

PLACE: 1901 Main Street, Suite 1200
Columbia, SC 29201

DATE AND TIME: November 28, 2017
9:30 A.M.

DEFINITIONS OF TERMS USED IN THIS SUBPOENA

A. The term "you" refers to Aetius Restaurant Group, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Restaurant Group, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

DOCUMENTS SOUGHT IN THIS SUBPOENA

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

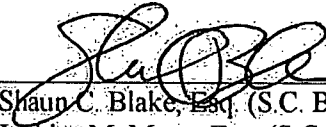
2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
 - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
 - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
 - b. Brent Weston, believed to be at the premises on the night of the Incident;
 - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
 - d. Aaron Miller, believed to be at the premises on the night of the Incident;
 - e. Jeff Miller, believed to be at the premises on the night of the Incident;
 - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
 - g. Ricky Young, a performer who participated in the Event;
 - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
 - i. Richard A. Finan, the Plaintiff in this action
 - j. Amber Finan, who as at the premises on the night of the Incident;
 - k. Chris Seiple, who was at the premises on the night of the Incident;
 - l. Stephanie Seiple, who was at the premises on the night of the Incident;
 - m. Joni Williamson, who was at the premises on the night of the Incident;
 - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
 - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
 - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
 - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
 - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
 - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
 - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
 - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
 - w. SW&B, who represents Vista Wings in this Litigation; and
 - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
 - b. Brent Weston;
 - c. Aaron Miller;
 - d. Jeff Miller;
 - e. Colby Wielkie;
 - f. Ricky Young;
 - g. Amber Finan;
 - h. Chris Seiple;
 - i. Stephanie Seiple, who was at the premises on the night of the Incident;
 - j. Joni Williamson;
 - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)
Jenkins M. Mann, Esq. (S.C. Bar # 74894)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Tel: (803) 256-1268
Fax: (803) 252-3653
Email: sblake@rogerslewis.com
jmann@rogerslewis.com

ATTORNEYS FOR PLAINTIFF

November 14, 2017
Columbia, SC

ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

PROOF OF SERVICE

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	PLACE	
SERVED ON	MANNER OF SERVICE	
SERVED BY	TITLE	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
 Executed on _____

 SIGNATURE OF SERVER

 ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

SUBPOENA IN A CIVIL CASE

TO: AETIUS RESTAURANT HOLDINGS, LLC:

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects follows):

PLACE: 1901 Main Street, Suite 1200
Columbia, SC 29201

DATE AND TIME: November 28, 2017
9:30 A.M.

DEFINITIONS OF TERMS USED IN THIS SUBPOENA

A. The term "you" refers to Aetius Restaurant Holdings, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Restaurant Holdings, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

DOCUMENTS SOUGHT IN THIS SUBPOENA

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
 - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
 - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
 - b. Brent Weston, believed to be at the premises on the night of the Incident;
 - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
 - d. Aaron Miller, believed to be at the premises on the night of the Incident;
 - e. Jeff Miller, believed to be at the premises on the night of the Incident;
 - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
 - g. Ricky Young, a performer who participated in the Event;
 - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
 - i. Richard A. Finan, the Plaintiff in this action
 - j. Amber Finan, who as at the premises on the night of the Incident;
 - k. Chris Seiple, who was at the premises on the night of the Incident;
 - l. Stephanie Seiple, who was at the premises on the night of the Incident;
 - m. Joni Williamson, who was at the premises on the night of the Incident;
 - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
 - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
 - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
 - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
 - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
 - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
 - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
 - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
 - w. SW&B, who represents Vista Wings in this Litigation; and
 - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
 - b. Brent Weston;
 - c. Aaron Miller;
 - d. Jeff Miller;
 - e. Colby Wielkie;
 - f. Ricky Young;
 - g. Amber Finan;
 - h. Chris Seiple;
 - i. Stephanie Seiple, who was at the premises on the night of the Incident;
 - j. Joni Williamson;
 - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)
Jenkins M. Mann, Esq. (S.C. Bar # 74894)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Tel: (803) 256-1268
Fax: (803) 252-3653
Email: sblake@rogerslewis.com
jmann@rogerslewis.com

ATTORNEYS FOR PLAINTIFF

November 14, 2017
Columbia, SC

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON	MANNER OF SERVICE	
SERVED BY	TITLE	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.
Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Exhibit 17
Motion to Reconsider

State of South Carolina) In The Court of Common Pleas
County of Richland) Fifth Judicial Circuit
2016-CP-40-7109

Richard A. Finan,)
Plaintiff,)
vs.) Transcript of Record
Vista Wings, LLC, et al.,)
Defendants.)

March 2, 2018
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

A P P E A R A N C E S:

Shaun C. Blake, Esquire
Attorney for the Plaintiff

Ryan C. Holt, Esquire
William H. Yarborough, Jr., Esquire
Attorneys for the Defendants

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	62

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
	No exhibits introduced.	

1 THE COURT: This is case number -- I assume this is
2 *Richard Finan vs. Vista Wings?*

3 MR. BLAKE: Yes, ma'am.

4 MR. HOLT: Yes, Your Honor.

5 THE COURT: All right, 2016-CP-40-7109, *Richard Finan*
6 *vs. Vista Wings, LLC*. There is a motion to quash motion,
7 motion to compel discovery by Vista Wings, and a motion to
8 compel subpoena responses. Is that correct?

9 MR. BLAKE: Yes, Your Honor.

10 THE COURT: All right, and it looks like these motions
11 were filed pretty much on the same dates except for the
12 subpoena responses. So, I'll be glad to hear from whoever
13 wants to go first.

14 MR. BLAKE: I can go first, Your Honor.

15 THE COURT: Okay.

16 MR. BLAKE: Your Honor, Shaun Blake. I'm one of the
17 counsel here for the plaintiff, Mr. Finan. Mr. Finan, just
18 quick background in the case, and I'm sure you had the
19 opportunity to read the materials. They were extensive I
20 know, but I wanted to try to get as much in front of the
21 court as I could just to lay out sort of where I think we
22 are in the case as I know Judge Hood is sort of waiting for
23 us to finalize discovery before we try this case.

24 Mr. Finan was in the Wild Wing location down in the
25 Vista back on June 5, 2015. He was there with his wife,

1 his sister-in-law, his brother-in-law, and he was there
2 because they had an event going on that evening where Wild
3 Wing had brought in a musician called Ricky Young. Ricky
4 Young apparently knows a lot of folks in Columbia; I think
5 he went to high school here. He's based out of Nashville
6 now, but this was an event that Wild Wing had, you know,
7 considered sort of a big deal. They had advertised it;
8 they had done radio bits. It was pulling in a lot of
9 people from the local community for the evening, Mr. Finan
10 being one of those.

11 Mr. Finan was sitting near the stage where the concert
12 was happening. He has two booths back on the right from
13 where that stage is located inside the restaurant. Your
14 Honor, we were able to get in and do photographs yesterday,
15 but I haven't gotten them printed off yet to show you sort
16 of the layout. But essentially where Your Honor is is the
17 stage Mr. Finan was in the second booth back to the right
18 of the stage. And there was a group at the front booth in
19 front of him that had what we now know to be a, a family of
20 individuals related to this gentleman who's one of the
21 defendants who we stipulated and dismissed yesterday, Mr.
22 Aaron Miller.

23 Mr. Miller and his family were sort of occupying the
24 closest booth to the stage, and friends and associates of
25 Mr. Miller were sort of milling around near the table

1 between the open space in the floor and the stage. What I
2 believe is not in dispute is that at some point in the
3 evening, one of Mr. Miller and Mr. Weston's joint
4 associates, a guy named Jordan Halacca [phonetic] was
5 sitting up on the edge of the booth between the Finans'
6 booth and the stage, and while I believe there's a
7 disagreement in discovery as to which lady tugged on Mr.
8 Halacca's shirt, somebody at the Finans' table tugged on
9 Mr. Halacca's shirt, said -- gestured and asked for him to
10 get down. That situation escalated and it escalated with a
11 group of people sort of converging on the Finans.

12 At that point, Mr. Finan left a conversation where he
13 was standing and speaking to a witness named Jody
14 Williamson. Left and tried to get between his wife and a
15 group of three males and said hey. Basically back up, get
16 out of my wife's face. At that point, the testimony is
17 that there was a gentleman, and we're not entirely clear
18 that -- if this is correct or not because Mr. Miller pled
19 the Fifth repeatedly in his deposition, but we know that
20 there was a gentleman named Chase Lightner who threw a
21 punch, and we believe that first punch was thrown and hit
22 Mr. Finan's brother-in-law, and from that point a melee
23 broke out. Tables are flipped over. There's some dispute
24 about whether Mr. Finan's brother-in-law flipped the table
25 over first or whether he was punched and then flipped the

1 table over, but as became clear in Mr. Miller's deposition
2 earlier this month, tables were flipped. A fight broke
3 out.

4 There is a dispute as to exactly what Mr. Finan did to
5 get himself placed into Mr. Weston's arm, but Mr. Weston --
6 there is no dispute that Mr. Weston ended up restraining
7 Mr. Finan like this. He claims that it wasn't a chokehold.
8 Mr. Finan and other witnesses have described it being a
9 pure chokehold with Mr. Finan's face turning colors, Mr.
10 Finan feel like he's losing consciousness, Mr. Finan being
11 afraid of his death. And a witness, Jody Williamson,
12 testified that she stood there two minutes and was throwing
13 whatever she could find at Mr. Weston, begging for him to
14 let Mr. Finan go because he was turning colors. He
15 couldn't breathe and somebody, either Mr. Miller or maybe
16 Chase Lightner, somebody proceeded to punch Mr. Finan in
17 the face while he was retained and being held in that
18 position by Mr. Weston, causing damage to his eyes and
19 injuring him further.

20 Ultimately, I think most of the witnesses agree that
21 the police came and broke up that situation. There's some
22 -- I think one person, maybe Mr. Weston testified that he
23 believes it was a Wild Wing employee, but what we know is
24 that he -- that Mr. Weston was not letting Mr. Finan go
25 until some security personnel came and retrieved Mr. Finan

1 from this, this -- what we contend is a chokehold position,
2 and we believe that the testimony shows that that was
3 around two minutes. That we, we know had enough time for
4 the fight to otherwise disperse, for the crowd around Mr.
5 Finan to spread out and leave. And the way Mr. Miller
6 described it in his deposition earlier this month,
7 essentially Mr. Weston was left, fight over, holding Mr.
8 Finan in this position, waiting for someone to take him,
9 and Mr. Miller testified that his wife said that it was
10 ultimately the police that came and led them outside.

11 Mr. Finan was sat down on the curb and questioned.
12 Mr. Miller was put in the back of a police car. He
13 conceded, again he did concede during his deposition he had
14 blood on his hands but otherwise pled the Fifth. So, we're
15 still trying to get to the bottom of who all struck Mr.
16 Finan and how.

17 But as a result of this, we have filed a lawsuit and
18 that lawsuit alleges that Wild Wing was negligent. That it
19 breached -- it was negligent per se because it breached
20 certain dram shot laws regarding the overservice of alcohol
21 to patrons during this event, that it failed to negligently
22 supervise its employees in its provision of security and
23 alcohol during the evening of the event. And really that
24 what we've now learned in discovery is that there has been
25 a systemic failure on Wild Wing's part to provide for any

1 security at all. That they, they had -- they contend that
2 there is a doorman that was at the door checking IDs, and
3 while they initially took the position in discovery that
4 there was no security for the event, that they didn't have
5 any security personnel for the event, they have now
6 somewhat shifted away from that position to say, well, no.
7 The door guys are security. There is testimony from Mr.
8 Miller in this case that the door guys were also serving to
9 -- bus tables and were sort of doing other work around.

10 So, obviously that's a fact in contention, but
11 ultimately Mr. Finan's position is if you're going to have
12 a big concert event and you're going to pump this event up
13 and make it a big signature event for you, you're doing so
14 with the intent of increasing your alcohol sales, and when
15 you know you're getting a lot of -- bunch of people
16 together at Wild Wing Cafe to have a wild time and serve
17 them a lot of alcohol to make money, you need to make some
18 provisions for security during that event to prevent this
19 type of melee from happening. And, and it's our, our
20 position, given the absolute dearth of any policies
21 relating to security and safety, and the fact that it's not
22 clear they have any security personnel, and that it was
23 required for the police to come in to get Mr. Finan out of
24 this chokehold, that this is a case of gross negligence and
25 a case that is going to demand ultimately a punitive charge.

1 to the jury as well.

2 So, I think that there is a dispute, a significant
3 dispute between us regarding the value of the case.

4 Plaintiff -- defendants are focused on the medical bills on
5 the case. I'm certainly much more focused on trying a case
6 of dodatic [phonetic] damages, essentially what is it worth
7 to be held in a chokehold for two minutes in front of your
8 wife, family, and friends believing you're going to die.

9 So, I didn't respond back to the email that defendant's
10 counsel sent you arguing that this is a \$1500 case because
11 I think we have a drastic different view of how to try this
12 case, how to present damages to a jury, and what the case
13 is worth.

14 We are here today on essentially quite what -- well,
15 there's three motions. I have a motion to compel discovery
16 from Vista Wings, LLC, which is the only defendant left in
17 this case at this point, and is the operator of the Wild
18 Wing, the premises that this fight broke out at.

19 The defendants have filed for Vista Wings a motion to
20 quash subpoena, four subpoenas I served on entities that
21 through my own research I have identified to be somehow
22 affiliated with Vista Wings, LLC. It's a series of
23 companies referred to as Aetius.

24 And forgive me, guys, if I mispronounce it. Y'all can
25 correct me.

1 But I, you know, I essentially served subpoenas on
2 Aetius Companies, LLC; Aetius Restaurant Group, LLC; and
3 Aetius Franchising, LLC; and Aetius Holdings, LLC. And a
4 lot of the discovery sought through those subpoenas indeed
5 do mirror some of the discovery that we're going to talk
6 about on the motion to compel, the reason being I'm going
7 to whatever source I can to try to find the documents I
8 need to try my case and to finalize these depositions,
9 including the 30(b)(6) depositions so we can get this case
10 ready for trial.

11 Your Honor, I believe that it probably makes the most
12 sense to talk about the discovery dispute between the
13 parties before we move on to the subpoenas to these third
14 parties because I think the -- sort of the issues are
15 somewhat interrelated. I don't know whether the defendants
16 agree or not.

17 MR. HOLT: I, I think they're separate motions, Judge,
18 and we -- of course the first motion we've got is the
19 motion to quash these unrelated entities that are up the
20 chain, the LLC chain. And so that, that's probably the
21 quicker issue to resolve because they're so attenuated.
22 So, we'd, we'd be happy to present on the motion to quash
23 first and then do the motions to compel as it's listed on
24 the roster, but whatever the court would prefer.

25 THE COURT: I don't have a preference. We can go

1 ahead with the -- you're already started the motion to
2 quash, so we can go ahead and continue with that.

3 MR. BLAKE: Start with the motion to compel, Your
4 Honor, you mean?

5 THE COURT: To quash.

6 MR. BLAKE: The motion to quash? Okay. So, so, they
7 have filed a motion to quash and I have filed a
8 corresponding motion to compel. The issues on those two
9 motions over -- are overlapping and related, Your Honor.
10 Essentially what, what they're saying is that I'm not
11 entitled to ask for this information because it's
12 duplicative and it's too burdensome.

13 My, my primary concern here, Your Honor, is getting
14 the following from these, from these companies, all of
15 which I believe the subpoenas are narrowly tailored to the
16 issues in this case. I'm essentially boiling these
17 requests down to twelve topics of document production that
18 I need so that I can determine whether or not I have
19 everything I need to depose Vista Wings and/or whether or
20 not I need to take the depositions of these Aetius
21 companies before we try this case.

22 The, the twelve documents are first -- the first topic
23 is ownership and control of Vista Wings, LLC. You'll
24 notice in the motion to quash, the defendants contend that
25 these companies are essentially the parents, right, and the

1 problem I have with that, Your Honor, also relates to the
2 motion to compel. I've sought discovery from day one in
3 this case, served with the complaint. Who were the members
4 of Vista Wings, LLC? And the argument that these are
5 essentially the parent companies, all four of them, sort of
6 is a, is a clean way to dodge a very direct question, which
7 is are they the parents or not? Do they own the membership
8 interest in Vista Wings, LLC or not? Do they control Vista
9 Wings, LLC or not? And so the first category of documents
10 I sought through subpoena from each of these companies are
11 the documents that show their ownership or control over
12 Vista Wings, LLC on the date of the attack.

13 And I can't imagine why I'm not entitled to that, Your
14 Honor. I can't think -- it's limited to the date of the
15 attack. I'm not asking for ownership or control documents
16 that were not in force or in place on the date of this
17 attack of Mr. Finan on June 5, 2015. But if they're
18 claiming that they're the quote unquote parents of Vista
19 Wings, LLC, I'd like to know that they have this membership
20 interest in Vista Wings, LLC so that I can further explore
21 that relationship and how they operate on this quote
22 unquote parent subsidiary relationship. So, I don't know
23 if you just want to take it by topic and allow them to
24 respond to that, Your Honor.

25 THE COURT: All right, I'll be glad to hear from you.

1 MR. YARBOROUGH: Your Honor, William Yarborough for
2 the defendant. Our, our motion to quash is essentially,
3 Your Honor, that most of the vast majority of what he's
4 asking for in these subpoenas -- I have copies of them for
5 Your Honor if you would like to see them -- but the vast
6 majority of what he's asking for in these things are
7 documents that would come directly from the defendant. And
8 so our position isn't necessarily that he's not entitled to
9 them, but that if he is entitled to them -- and there are
10 discovery disputes that we believe are a separate issue --
11 but if he is entitled to those documents, that those
12 documents are properly requested in discovery pursuant to
13 Rules 33 and 34, Your Honor.

14 And I have some case law here that I would be happy to
15 pass up to Your Honor. They are federal cases but they
16 contemplate Rules 45 and 34 and 33, Your Honor, and the
17 rules are largely the same. But essentially what they are
18 saying, Your Honor -- it's *Layman vs. Junior Players Golf*
19 *Academy, Inc.* It's ---

20 Shaun, I have a copy of it you if you would like it.

21 MR. BLAKE: Yeah.

22 MR. YARBOROUGH: That's from the District of South
23 Carolina, Your Honor.

24 (A PAUSE.)

25 MR. YARBOROUGH: But essentially it says, Your Honor:

1 The leading treatises agree that although Rule 45
2 may apply to both parties and nonparties, resort
3 to Rule 45 should not be allowed in that
4 circumvents the requirements and protections of
5 Rule 34 for the production of documents belonging
6 to a party. If documents are available from a
7 party, it is then thought preferable to have them
8 obtained pursuant to Rule 34 rather than subpoena
9 -- subpoenaing them from nonparty witnesses.

10 So, Your Honor, our position is simply that the vast
11 majority of the documents that he's requested through these
12 subpoenas are documents that are properly gotten from Vista
13 Wild -- from Wild Wing Cafe in the local location, Your
14 Honor. And to clear it up, they are parent companies to
15 some extent. There's corporate entities within corporate
16 entities. I get them confused, but that is the
17 relationship.

18 MR. BLAKE: Well, one, Your Honor, this case is
19 referring to a party to the litigation being served a Rule
20 45 request, and it's Layman, the party objecting to being
21 served Rule 45 request, saying you can't use Rule 45
22 against a party to circumvent 34.

23 I completely agree. I am not contending that Vista
24 Wings, LLC need to respond to my subpoenas. None of these
25 companies are parties to this litigation yet unless I

1 discover information that makes them parties in this
2 litigation, and I'm not asking for Vista Wings's records.
3 I'm asking for these four companies' records, which again
4 to date have never been identified despite me requesting it
5 in December of 2016 to be a member of any party to this
6 litigation. And so if they are, again there's a reason why
7 there's a motion to compel on that issue. They can't have
8 it both ways and say that they are essentially the same
9 party and I get the, and I get discovery from Vista Wings
10 when they won't even confirm in my interrogatory responses
11 who the members of Vista Wings are.

12 These are independent subpoenas served by, by -- to
13 third parties, and the documents shouldn't overlap unless
14 there's a relationship there that has yet to be disclosed
15 in discovery until we stand here today, and if so, that's
16 why I've been asking that question for over a year.

17 MR. YARBOROUGH: Your Honor, I would disagree with his
18 categorization of that case. I have actually another case
19 that interprets that case. It says:

20 In *Layman*, the court found that because the
21 plaintiff could have obtained the documents from
22 the defendant pursuant to the procedures outlined
23 in Rule 34, that the subpoena of a nonparty was
24 an attempt to circumvent Rule 34.

25 So, I think that clearly lays out that it was a

1 nonparty that was subpoenaed and the documents properly
2 came from the party, and that is our position is that they
3 properly come from the party.

4 MR. BLAKE: Again, how do the ownership documents of
5 these four companies come from Vista Wings? I'm not asking
6 for Vista Wings's documents. I'm asking for these four
7 parties that I've subpoenaed to give me the documents that
8 show their ownership interest in this defendant. Surely
9 defense counsel isn't arguing that they're just conflating
10 every corporate entity that in some way is affiliated with
11 Vista Wings, LLC. If that's the position and they're going
12 to say that it's all one company, then make that an issue
13 of record in the case. And then I'm going to ask the court
14 to revisit discovery orders that have been refused in this
15 case when I have attempted to get financial records from
16 those companies, when defendants stood here in this
17 courtroom a year ago and argued that we couldn't get the
18 corporate records because those are corporate entities that
19 weren't affiliated with Vista Wings directly and they
20 didn't have a bearing on this case. They can't have their
21 cake and eat it, too, on that issue.

22 THE COURT: Are the companies, are the companies
23 affiliated? Are they the parent company or is it all one
24 company?

25 MR. YARBOROUGH: It's the parent companies, Your

1 Honor, and I think we're getting the issues confused here.
2 I'm, I'm referring to the subpoenas in their entirety. I
3 think he's focusing on the first topic completely, and so
4 my motion to quash was for this entire subpoena, these four
5 subpoenas that if Your Honor looks at, you'll see that -- I
6 said the vast majority. I didn't say all of. The vast
7 majority of what is being requested in these are documents
8 that have been requested in discovery from the party, and
9 largely I would consider answered. I know there's
10 disagreement that we'll talk about later, but to answer
11 Your Honor's question, no, they are not the same entity.

12 THE COURT: Where are the subpoenas?

13 MR. YARBOROUGH: I have them here, Your Honor, if I
14 may approach?

15 THE COURT: Thank you.

16 MR. YARBOROUGH: Thank you.

17 (A PAUSE.)

18 THE COURT: All right, I guess maybe I'm missing the
19 connection here. If they're not -- they're the parent
20 corporation and it's not -- they're not all the same, then
21 I'm not sure how the subpoenas regarding what policies and
22 procedures, the question regarding what's their
23 relationship, how that is not discoverable.

24 MR. YARBOROUGH: Your Honor.

25 THE COURT: If there is, if there is a -- but if

1 there's documents that's already been disclosed, then I
2 think they can -- or if they don't have those documents,
3 then they can clearly just state that they don't have them
4 and they've been previously disclosed. But it appears that
5 he's asking for more than just -- some of the questions in
6 there do ask for stuff specifically about the location down
7 the street, but not all of them do.

8 MR. YARBOROUGH: I ---

9 THE COURT: So, I don't -- I can't quash the subpoena
10 when not all of them do.

11 MR. YARBOROUGH: I would, I would agree, Your Honor,
12 that they don't all refer to them. Is there a way that we
13 could -- the court could modify the subpoenas because if
14 you look at them, some of them -- one specifically says
15 communications between all of the entities and us, which I
16 think is protected by attorney-client privilege.

17 MR. BLAKE: Your Honor, their letter of November 15th,
18 which I'll be happy to show the court a copy of, says: As
19 of now, we have been retained to represent these four
20 companies. If they're going to assert attorney-client
21 privilege, I want them to come here and make an offer of
22 I'm showing you, the court, *in camera* what documents are
23 privilege. Those -- have them in a privilege log. The
24 only indication I have is a letter from Sweeney Wingate on
25 November 15th identifying the beginning of their

1 representation. I'll hand up the first page, Your Honor,
2 if I may approach? Beginning of the second paragraph on
3 the first page says: In line with your question as to who
4 we represent, at this time we have been retained.

5 THE COURT: All right, all right, but what needs to
6 happen is that if you have a document -- some of the
7 documents that you are asking for should -- I assume you
8 already have.

9 MR. BLAKE: I don't. That's why I'm asking for them,
10 Your Honor. What I'm asking for is what -- here's the
11 issue I have, and I could go through the twelve topics,
12 Your Honor. Again, I'm asking for ownership and control
13 documents. I don't have ---

14 THE COURT: Well, we know you don't have that. I'm
15 assuming he's not objecting to that.

16 MR. YARBOROUGH: No, ma'am. That's something that
17 we ---

18 MR. BLAKE: The second category is any agreement
19 whereby those four companies have agreed to indemnify Vista
20 Wings, LLC for any injuries that, that the plaintiff has
21 suffered in this lawsuit. I don't have that.

22 MR. YARBOROUGH: We've answered in discovery that
23 there's no franchise agreement between the parties.

24 MR. BLAKE: Didn't say franchise agreement. I said
25 indemnification agreement.

1 THE COURT: All right. I think you got to answer
2 that.

3 MR. YARBOROUGH: Okay.

4 MR. BLAKE: The third one was any franchise agreement,
5 which they've answered, or other operating requirements,
6 those agreements showing operating requirements that these
7 companies, these four companies, have placed on Vista
8 Wings, LLC that relate to staffing levels, the conduct of
9 these events, training of employees, alcohol controls,
10 security, safety policies, and investigations of injuries
11 like the plaintiff's injury in this case. Policies and
12 procedures put out by these companies upon Vista Wings,
13 LLC, I don't have those relating to any these of these
14 topics.

15 MR. YARBOROUGH: And, Your Honor, we have produced all
16 of the policies, internal policies and procedures for the
17 Vista Wild Wing location, Your Honor. It is our position
18 that those are internal policies and procedures at the
19 store level and at not the corporate level.

20 MR. BLAKE: Exactly, and that's why I didn't ask for
21 those.

22 THE COURT: Are there any policies at the corporate
23 level, and I guess it's ---

24 MR. YARBOROUGH: Your Honor, I believe that the
25 policies and procedures are the policies and procedures

1 that we produced. Those are just what they are, and I
2 don't think there's anything above and beyond that. I'm
3 happy to check.

4 THE COURT: All right, so let's -- I mean, that would
5 be if there are some policies and procedures of the, I
6 guess, parent corporation, then they need -- that's
7 discoverable.

8 MR. HOLT: Your Honor, I think there's an important
9 issue that's perhaps not being addressed here, and is the
10 -- and the court is well aware of how the Limited Liability
11 Act provides for the organizations of companies in the
12 state of South Carolina in that companies are not organized
13 as they once were where you have mom and pop on the street,
14 but that nowadays we have chains of companies sometimes
15 five links in depth that run all over the country, and
16 these various corporate entities have investments in more
17 local actors. And so it's difficult for me to see how a
18 company four or five degrees removed from the defendant has
19 anything to do with what happened on an evening where the
20 plaintiff got in a fight with a couple of people eating
21 with him.

22 I mean, it's -- the Supreme Court has been abundantly
23 clear about the purposes of discovery in the cottage
24 industry that has, in essence, developed to kind of get
25 some of the things. So now my concern, it sounds like the

1 court has ruled that subpoenas of the nonparty would be
2 appropriate here. My question is what is the, what is the
3 relevance of the corporate organization documents of
4 somebody who's five links above and is in a different state
5 and has simply invested in this restaurant?

6 THE COURT: Well, we're not -- for purposes of a
7 motion to quash and motions to compel or discovery, the
8 issue's not whether or not it's -- well, it's whether or
9 not it's admissible or -- but I think it's discoverable. I
10 mean, I don't know what y'all -- you have -- apparently you
11 all don't know what they say either. So, are there any
12 policies and procedures that say how they're supposed to
13 operate at this level? I think that's all he's asking.

14 MR. BLAKE: I'm not asking for what they do in five
15 states away. Their subpoena doesn't say every policy and
16 procedure you've ever adopted. It's the ones that you've
17 adopted that govern what this entity does on Lady Street in
18 Columbia, South Carolina, relating these topics. I don't
19 care what they do in North Carolina. I, I heard Judge --
20 it wasn't Macaulay. It was ---

21 MR. HOLT: Judge McFaddin.

22 MR. BLAKE: I heard Judge McFaddin loud and clear: we
23 don't get to do corporation-wide discovery. Now, again if
24 they answer my interrogatory and say that those are
25 actually direct members and parents, I'm filing a

1 reconsideration motion on that issue. However, I
2 understand that right now the position is that those are
3 corporate entities that are operating elsewhere. I don't
4 care about what they do in North Carolina. I want to know
5 what the rules, what -- their operating requirements that
6 they placed on ---

7 THE COURT: If any.

8 MR. BLAKE: --- on Vista Wings, LLC is.

9 THE COURT: If any. I mean, that's all you have to
10 answer.

11 MR. BLAKE: If any. If any. It could be none. I
12 just don't want to show up at trial and me arguing, Your
13 Honor, telling the jury they don't have policies and
14 procedures for staff and their security during events where
15 they know they're -- that they're going to sell twice as
16 much alcohol as they sell on a regular night, and they say
17 not so fast. Here it is.

18 THE COURT: All right. So, I will -- I do think you
19 need to narrow the subpoenas because they are -- I mean,
20 the documents that are related to number 1 -- number 6, why
21 would the parent corporation have that?

22 MR. YARBOROUGH: And we've already given him that,
23 Your Honor.

24 MR. BLAKE: And, and the reason, Your Honor, I'd like
25 to hand up what they gave me a few weeks ago, Your Honor, I

1 got an email, one email that's been produced in this case
2 relating to the marketing of this event.

3 (A PAUSE.)

4 THE COURT: I don't think the parent corporation would
5 have ---

6 MR. BLAKE: It does, and that's what I'm going to hand
7 you, Your Honor. Pass up a copy of 325.

8 (COUNSELORS CONFER.)

9 MR. BLAKE: I'm going to hand you WWC000325. This was
10 produced to me earlier this month. This is a document, I
11 ask you to look at the email, the people in that email
12 chain and then have defense counsel tell you which one of
13 any of those people in that email chain work at Vista
14 Wings, LLC, the location in Columbia.

15 (A PAUSE.)

16 MR. YARBOROUGH: Your Honor, we produced all the
17 marketing materials we have on this event, and I don't know
18 how communications about booking a band are in any way
19 reasonably calculated to lead to the discovery of
20 admissible evidence in a case where there is a fight.

21 MR. BLAKE: I'm happy to explain it, Your Honor.

22 THE COURT: All right, he said that he gave you all
23 the marketing materials. If they come up with something
24 else at trial, it will be excluded. So ---

25 MR. BLAKE: And, Your Honor, I do want to clarify that

1 again what I really want to know, I've been trying from day
2 one to get simple things like the contract. You see in
3 there where it talks about \$2000 being paid to the Ricky
4 Young Band and \$75 bar tab being provided to Ricky Young
5 Band for that concert? I've never been given where that
6 came from. I don't have the communication from the Ricky
7 Young Band. I don't have the payment to the Ricky Young
8 Band. I don't have the very records that are part -- that
9 are referenced in there, including this concept they have
10 that they were pumping this event at alley events, whatever
11 those things are called. I don't have the marketing
12 information that relates to him being some special
13 performer under this series of promotions they're doing.

14 What I'd like to be able to present to the jury, Your
15 Honor, is that while they spent zero time, zero time
16 concerning themselves about security for events like this,
17 they spent a ton of time and a ton of money marketing
18 events like this to pump crowds into this. It goes
19 absolutely to the issues of duty to provide security and
20 their gross negligence in failing to do so. So, the reason
21 why I'm pressing for this marketing information, Your
22 Honor, is so that I can have the documents, their
23 communications. Even -- I've asked for the -- I can't get
24 the telephone number or the mailing addresses for these
25 individuals on that email chain. I can't get them properly

1 identified. I can't know who their employers are. I just
2 want to be able to talk to these people and their employers
3 about what they do to market versus what they do to provide
4 security for their patrons. And they won't give me the
5 information to do it other, other than now finally giving
6 me a glimpse at that one email that gives me one look
7 behind the curtain in their marketing process. It's
8 completely hamstringing me from telling my story.

9 MR. YARBOROUGH: And, Your Honor, I would again
10 question how it's reasonably calculated to lead to
11 discovery of admissible evidence how booking a band that
12 happened to be playing in the background of a bar fight has
13 anything to do with this lawsuit, Your Honor.

14 THE COURT: Well, he's saying it's -- that it deals
15 with the amount of people that were there and no security.

16 MR. YARBOROUGH: Your Honor, and we have given him --
17 we've actually specifically asked for the contract and that
18 is -- there just was no contract between the band. They
19 just paid the money, I guess. I really don't know.

20 MR. BLAKE: Who paid the ---

21 MR. YARBOROUGH: We had ---

22 MR. BLAKE: Who paid the money? Who? Who paid the
23 money? I've asked for that for a year and a half. Who
24 paid the money?

25 MR. YARBOROUGH: And again ---

1 THE COURT: All right, it sounds like y'all have quite
2 a bit of issues that y'all need to resolve before a trial.

3 As to the motion to quash number 1 -- I mean in the
4 subpoena, I'm going to let him get that information.
5 Number 2, number 3, number 4, number 5, these claims,
6 number 6 and 7 they've already given you. Number 8, the
7 website I'm assuming is national.

8 MR. HOLT: Judge, these items are also available, they
9 would be available through a cache search, c-a-c-h-e, of --
10 you know, through any internet provider. I guess my
11 concern ---

12 MR. BLAKE: That's correct.

13 MR. HOLT: Judge.

14 MR. BLAKE: But they haven't produced that, Your
15 Honor.

16 MR. HOLT: Judge, I, you know, I've not been doing
17 this as long as some people, but I don't know that I've
18 ever seen a subpoena with seventeen topics, some of which
19 have subsections A through X. I mean, this is the most
20 egregious and broad subpoena I think I have ever seen about
21 ---

22 THE COURT: It, it is ---

23 MR. HOLT: --- about a bar fight.

24 THE COURT: It is broad, and that's why we're going
25 through.

1 Number 10, those that relate to the provisions of
2 security staff, employees, products, or other resources for
3 the event.

4 MR. BLAKE: Your Honor, if these other parties provide
5 security staff or alcohol for this event or other
6 provisions for this event, I would like to know who they
7 are because they may be liable for what occurred that
8 night. If they didn't, they can just say we don't have any
9 documents because we didn't provide security staff, but
10 it's relevant for me to have them say we didn't do this.
11 One, I know I've sued the right people and I haven't left
12 defendants out and two, Wild Wings LL -- this entity can't
13 come to trial and say, well, no. Yeah, we said we didn't
14 have any security but we didn't have to because our parent
15 company, the people that sent those email, they arranged
16 for the security for the concert. I don't want to get
17 trapped in some kind of weird loophole here where they
18 precisely answered the question and didn't disclose the
19 other information. This subpoena is drafted -- it's got a
20 lot of words to be very precise to the issues that are left
21 in the case that I need to rule out against these third
22 parties.

23 THE COURT: All right, number 10 they can -- if, if
24 they provided separate security or some contract for
25 security, they can provide that, those documents. If they

1 didn't, they just say no. Same thing with number 11.

2 Now, number 12.

3 MR. BLAKE: Your Honor, those are witnesses; those are
4 people that were involved in it. I'm asking for the
5 communications that those companies have had between those
6 parties or those witnesses ---

7 MR. HOLT: Judge, in subsection W ---

8 MR. BLAKE: --- what I believe to be related entities

9 ---

10 THE COURT: Hold on. We're not going to talk over
11 each other.

12 MR. BLAKE: Or companies that we believe are related
13 entities or their representatives, if they had
14 communications regarding this event, this attack, or this
15 lawsuit with the witnesses, I'd like to know what they are
16 because again, those communications are impeachment records
17 that I can use at trial.

18 MR. HOLT: Judge, if subsection W is included, I'd
19 just ask the court for protection there because we have a
20 problem if subsection W is coming into play.

21 MR. BLAKE: Then we ---

22 MR. HOLT: And I respect Mr. Blake, but when you start
23 bringing in opposing counsel as witnesses, we, we've just
24 got a number of issues that I'd rather not ---

25 MR. BLAKE: Absolutely not ---

1 MR. HOLT: --- again, a member ---

2 MR. BLAKE: --- witnesses.

3 MR. HOLT: --- of the bar.

4 MR. BLAKE: Not bringing them in as witnesses, Your
5 Honor. I'm bringing them as agents for witnesses and
6 parties -- I'm asking a third party have you had
7 communications with the agents for the party in this case.

8 THE COURT: That would be attorney-client privilege.

9 MR. BLAKE: Only if there's an attorney-client
10 relationship. If, if Mr. Holt or Mr. Yarborough had
11 communication with third-party witnesses, there's no
12 privilege in the world that covers those communications,
13 right? If they are saying they have an attorney-client
14 privilege relationship with those individuals, then the
15 rules require them to demonstrate the same.

16 THE COURT: I'm not going to allow that. You can
17 strike W out. It could be work product. It doesn't
18 necessarily -- I mean, if they spoke with these people, I'm
19 not going to -- we're not going to allow W.

20 Number 13, investigation or inquiry by you.

21 MR. BLAKE: I'm just asking if they, if they
22 investigated the attack or they investigated this lawsuit.

23 THE COURT: And that's a yes or no answer, I assume.

24 MR. YARBOROUGH: And we provided an incident report,
25 which would be the only document.

1 THE COURT: You did what now?

2 MR. YARBOROUGH: Wasn't -- was there -- yeah, we
3 provided these -- we provided individual statements and ---

4 MR. BLAKE: Again, I'm asking from these companies.
5 These companies didn't do independent ---

6 THE COURT: Just, they just need to say ---

7 MR. YARBOROUGH: Okay. Yes, ma'am.

8 THE COURT: --- whether or not they ---

9 MR. YARBOROUGH: Yes, ma'am.

10 THE COURT: --- did it, yes or no.

11 MR. YARBOROUGH: Yes, ma'am.

12 THE COURT: Just a simple answer.

13 MR. BLAKE: Thank you, Your Honor.

14 THE COURT: And then I'm sure there will be another
15 motion after that if they did regarding whether or not it's
16 work product or in anticipation of litigation and all that
17 other good stuff.

18 Number 14.

19 MR. YARBOROUGH: And, Your Honor, this, I believe, is
20 directed specifically at the individuals who would have
21 been working in that store specifically, and that's
22 something that we get from that store specifically. We
23 provided -- this is an issue that we have in the motion to
24 compel that I assume we can save that one for later, Your
25 Honor, but those come from the store. Those are

1 individuals who are working in the store on the night of
2 the accident. To ask for their employment records from
3 anyone else is -- just because they have control -- they
4 could get them. Doesn't mean that they are the proper
5 party to get them from.

6 MR. BLAKE: And, Your Honor, I don't have a crystal
7 ball. I don't have any idea if that's correct or not. I'm
8 asking -- 14 relates to the payment for that event, and
9 I've asked for proof of the payment of the event for a very
10 long time.

11 THE COURT: Can you, can you give them the -- what's
12 the problem ---

13 MR. YARBOROUGH: I'm ---

14 THE COURT: --- with giving them the documents
15 regarding the payment and payment of security?

16 MR. YARBOROUGH: I'm sorry. I skipped one ahead, Your
17 Honor.

18 THE COURT: Yeah, you did.

19 MR. YARBOROUGH: I'm sorry. I was talking about 15.

20 THE COURT: That's okay.

21 MR. BLAKE: Oh, I'm sorry. I didn't even realize you
22 were on 15.

23 MR. YARBOROUGH: Sorry. That's my fault.

24 THE COURT: He's on 15.

25 What's the problem with giving them the -- who paid

1 for the event, who paid for security services, and if they
2 don't -- I guess what I'm saying, if they don't know, they
3 don't. They, if they didn't do it, they just say no, we
4 don't know.

5 MR. YARBOROUGH: Exactly.

6 THE COURT: But I do think on a local level, I'm
7 assuming that somebody's going to have to tell them who
8 paid for the security and contracted with security.

9 MR. YARBOROUGH: Your Honor, the security that we've
10 identified from the beginning was three doormen, and I know
11 that security is a conflated term that we probably disagree
12 over, but they provide security functions. They don't have
13 security shirts. They don't walk around in, you know...

14 THE COURT: Yeah. So, they need to answer -- I mean,
15 they can answer if they had any part in paying for any part
16 of the event, and they can say yes or no. If it's yes,
17 they can say what they paid for.

18 Number 15 is employment records you have for Wild Wing
19 staff. He's saying they already gave you the employment
20 records.

21 MR. BLAKE: Well, when we had the motion to compel on
22 that, they'd given me parts of five employment records, but
23 the people that I've asked for of the Wild Wing's staff is
24 a, is a group of people I've defined elsewhere in discovery
25 and subpoena, Your Honor, and again if they're telling me

1 that the reason -- I sent the subpoena asking for
2 employment records because I only got five partial ones.
3 If they're telling me that the local store is actually
4 going to respond and give me employment records that they
5 possess, then that's fine as long as they're identical to
6 the employment records that these other four companies have
7 access to.

8 Again, I'm trying to prevent some hide-the-ball game
9 where there's employment records saying, for example, Cera
10 Falls, the waitress that night, later got fired because a
11 sting operation showed that she overserved or gave alcohol
12 to minors, for example, right? I don't want that to be
13 tucked away in one of these other company's employee files
14 and I don't get access to it.

15 THE COURT: All right. All right, employ -- on
16 employment records, can you all get him the -- from the
17 local company the employment records?

18 MR. YARBOROUGH: Your Honor, this is, this is a point
19 of contention that is -- may be better served in the motion
20 to compel argument. This is -- we think this is the,
21 almost the critical issue why Rule 34 protections are
22 included.

23 We had, I don't know, something like thirty people
24 working that night, and we had what I considered to be a
25 previous agreement to give them bartenders and the, and the

1 security people, and we separately agreed to give them the
2 waitress involved in this incident. But, Your Honor, we
3 have objected to producing everybody who was working
4 because what if somebody who was working in the kitchen,
5 his employment record mattered? And the employment records
6 that we've given him do constitute the entire employment
7 record for that individual. These are servers and
8 bartenders at a, at a bar, Your Honor, and they're not, you
9 know, big, you know, drivers for a trucking...

10 MR. BLAKE: It doesn't ask for a -- it specifically
11 excludes back-of-the-house people. I'm not asking for
12 people in the kitchen at all; that is not who is included
13 in the definition of Wild Wing staff. I'm asking for the
14 people in the front of the house that were either serving
15 alcohol that night and only that night. Not asking for any
16 other day, any other time. The people who worked second
17 shift the night my guy was attacked in the front of that
18 house either providing the security or alcohol. Don't care
19 about anyone else's employment file, but of the people that
20 were there that night that overserved these individuals, if
21 those people have employment files that show that, one,
22 they, they accepted the policy or procedure that I haven't
23 seen yet, right? So, hey, employment -- employers put in
24 their employment files you, you've read and acknowledged
25 our policies and procedures. I don't have any that limits

1 what they sell in alcohol. I don't have any that discusses
2 how they're supposed to provide for patron safety. If
3 someone has signed for that in their employment file, I
4 want to know about it so I can ask them about it at their
5 deposition.

6 THE COURT: All right.

7 MR. BLAKE: And I can ask for the record.

8 THE COURT: All right, the employment files need to be
9 turned over for the people who were working the bar and I
10 guess the service, and I don't have all of the names, and
11 I'm not going through all of the names here this morning.
12 But the bartenders, the servers, and who else?

13 MR. BLAKE: Anyone that was a doorman or security
14 person.

15 THE COURT: The three -- he said it was three people
16 at the door, right?

17 MR. YARBOROUGH: Yes, ma'am.

18 THE COURT: Y'all have already ---

19 MR. YARBOROUGH: We've already given them those and
20 the bartenders. You know, we know who the server was for
21 all these people.

22 MR. BLAKE: No, we do not.

23 MR. YARBOROUGH: The ---

24 MR. BLAKE: That is not true.

25 THE COURT: Well, usually it's more than one server,

1 it's that many people. So, the servers. We don't need
2 anybody working in the back kitchen or any -- but the
3 servers who were serving. How many servers were serving
4 that night? You don't need everybody in the restaurant.

5 MR. BLAKE: So, they're telling me that the people who
6 we know were involved, they admit that they drank -- some
7 of them drank upstairs at what's called the upstairs bar,
8 right? They'd get them a receipt from the upstairs bar
9 that they agree is relevant to this litigation, correct?

10 MR. HOLT: Which, which, which receipt are we
11 referring to?

12 THE COURT: All right, all right.

13 MR. BLAKE: One of the -- the only three detailed
14 receipts you've given me came from the Up Bar, Up Bar 2.

15 MR. YARBOROUGH: Who would, who would have been served
16 by the bartender, which we've already given you the file
17 for it.

18 THE COURT: Okay, so there -- usually in restaurants
19 servers, there's certain servers that are assigned to a
20 certain area. Wherever these people were sitting in the
21 restaurant, the servers -- I'm assuming they did more than
22 drink and they probably ate. You're asking for the people
23 that were serving them food and serving them drinks?

24 MR. BLAKE: And, Your Honor, the testimony from Mr.
25 Miller, and I can read his deposition testimony to you, is

1 that these people were not all -- they were not sitting at
2 his table. They were not drinking with Cera Falls. He
3 believes a lot of them were drinking at the bar, but he
4 doesn't know where they were sitting or where they were
5 drinking. That's the testimony of the witnesses. They
6 don't know where they were sitting or drinking. He doesn't
7 know where Mr. Halacca was ordering his food and drink; he
8 doesn't know where Chase Lightner was ordering his food and
9 drink. That table that -- where the fight broke out was
10 where Mr. Miller's family was sitting and the other people
11 were milling around, but much like Mr. Miller himself, they
12 weren't all just drinking at the table.

13 MR. YARBOROUGH: And, Your Honor, this is kind of the
14 issue we have with discovery in this case. Is he saying
15 because it, it's possible that someone might have been
16 served by some server way over here that we'll never be
17 able to show -- you know, we have the burden of proof. We
18 should get their employment file so we'll be able to show
19 that if they have anything in their employment record, we
20 can put that into trial, and I don't think that's the right
21 way to go conduct discovery, Your Honor.

22 MR. BLAKE: That is the definition of discovery: is it
23 reasonably likely to lead to the discoverability -- the
24 discoverable -- sorry, the discovery of admissible
25 evidence.

1 THE COURT: All right. So, the servers, the
2 bartenders, the people at door and, and that's it.

3 MR. BLAKE: Thank you, Your Honor.

4 THE COURT: I'm assuming the videos and pictures and
5 stuff have already been sent from the local.

6 MR. BLAKE: I've been told none from the local, so I
7 want to make sure the parents don't have any either.

8 THE COURT: Do you know if there's any?

9 MR. YARBOROUGH: We don't. We don't. The video
10 cameras are constantly overwriting themselves. By the time
11 we knew that there was a lawsuit filed, they were gone.

12 THE COURT: All right. Thank you. So number 16 ---

13 MR. BLAKE: May -- what ---

14 THE COURT: --- take that one out.

15 MR. BLAKE: One caveat, Your Honor, and I would just
16 like them to -- their -- these four companies to also
17 confirm that they don't have backups or copies of it, the
18 reason being we didn't wait until we filed a lawsuit. We
19 sent a litigation hold letter right after this event
20 happened. They've refused to acknowledge when they
21 received that litigation hold letter despite me asking for
22 an admission to that in discovery, but again I want to,
23 want to know whether or not these companies have backups or
24 not where those records can be obtained.

25 THE COURT: They can answer that yes or no ---

1 MR. BLAKE: Thank you, Your Honor.

2 THE COURT: --- if they have it or not.

3 MR. BLAKE: Thank you, Your Honor.

4 THE COURT: I'm assuming they're going to say -- if
5 the local folks don't have it, I'm assuming the parent
6 company wouldn't have ---

7 MR. BLAKE: The only scenario, Your Honor ---

8 THE COURT: --- it either.

9 MR. BLAKE: --- is that it's a web-based system. They
10 can back it up online.

11 THE COURT: All right, 17 is the same thing. All
12 right, that's the motion to, motion to quash. So, you need
13 to redraft that and take out the parts that I said to take
14 out.

15 MR. BLAKE: And, Your Honor, so, so, to be clear, you
16 want me to take out 7 and -- is it 7 and 8, Your Honor?

17 THE COURT: 6, 7.

18 MR. BLAKE: 6 and 7, that's right. Sorry.

19 THE COURT: There was something else.

20 MR. BLAKE: 6, 7 and then 12.

21 THE COURT: And 15. Well, 15 was, was limited to the
22 servers and 12(w) needs to come out.

23 MR. BLAKE: 12(w). You know, and rather than
24 re-serving the subpoena, can I simply put that in an order,
25 modify, and modify the subpoena? Otherwise, I'm worried if

1 I re-serve the subpoena, we're then going to be back here
2 on another motion regarding the subpoena.

3 THE COURT: I'm not following you.

4 MR. BLAKE: In other words, rather than -- you said I
5 need to send over a revised subpoena. Rather than revising
6 the subpoena, can I submit a proposed order for your
7 signature that modifies the current subpoena so I'm not to
8 resend the subpoenas?

9 THE COURT: But I think you got to send the subpoena
10 to these folks, so you maybe do the order and attach the
11 revised subpoena to it.

12 MR. BLAKE: That works. Thank you, Your Honor.

13 THE COURT: All right.

14 MR. BLAKE: And one more issue for that order, Your
15 Honor. How much time will they have to respond should I
16 put in the order?

17 THE COURT: Well, it's quite a few documents.

18 MR. BLAKE: Yes, Your Honor. I agree.

19 THE COURT: So, how much time did you ask -- how --
20 when did -- how much time did you give them initially?

21 MR. BLAKE: I gave fourteen days, Your Honor, just
22 because we were trying to get depositions scheduled, which
23 is still the case.

24 MR. YARBOROUGH: I think it was ten days originally,
25 Your Honor. That was part of the motion to quash just

1 because that was a short amount of time.

2 THE COURT: Twenty days.

3 MR. BLAKE: Thank you, Your Honor.

4 MR. HOLT: Thank you, Judge, and just for the record,
5 another concern is there's a part of Rule 45 which allows
6 for the reasonable cost of preparing materials and the
7 response to the subpoena. We just ask that the court
8 enforce that as well because this will take some time and
9 treasure in order to procure all these documents.

10 MR. BLAKE: Your Honor, it states that it's those
11 parties' burden to show us what that cost, if any, is. We
12 don't have to accept counsel's representation that it's
13 going to cost ---

14 MR. HOLT: They'll ---

15 MR. BLAKE: --- something.

16 THE COURT: Send them a bill.

17 MR. HOLT: Thank you, Your Honor.

18 THE COURT: All right, and then there's two motions to
19 compel.

20 MR. HOLT: I think that the third one on this roster
21 is related to the motion to quash, so I think, Judge, it
22 just should be number 2.

23 MR. BLAKE: I agree, Your Honor. We've disposed ---

24 THE COURT: All right.

25 MR. BLAKE: --- of the motion to compel subpoena

1 responses.

2 THE COURT: All right.

3 MR. BLAKE: It's just the motion to compel discovery.

4 THE COURT: Let's move through this quickly.

5 MR. BLAKE: So, Your Honor, I'm going to move through
6 quickly and part of it's because I -- what -- there's three
7 issues really in this motion to compel, and I understand
8 the court's employment ruling to apply to the motion to
9 compel as it relates to the employment records because
10 again those -- employment records issue is, is sort of (b),
11 item (b), second of three items on the motion to compel
12 where I've asked for employment records for employees. I
13 understand that the court's order is regardless of whether
14 they're in the possession of Wild Wings, the defendant and
15 the other four parties, that whoever these five companies
16 are, someone has to give the employment records for people
17 as the court has already stated. Is that correct?

18 THE COURT: Yes.

19 MR. BLAKE: Thank you. So, so, that resolves that
20 portion of the motion to compel. Your Honor, then we're
21 down to witness, witness identification and to the
22 documents regarding the alcohol sales that are within the
23 point-of-sale and the alcohol inventory management system
24 that this company has that I've requested. So, I'll, I'll
25 move through the witnesses because I think that's not

1 really as complicated of an issue.

2 The first item on my motion to compel relating to
3 witnesses was I was asking for the addresses, telephone
4 numbers, emails, and last know business affiliation,
5 essentially mirroring the standard interrogatory asking for
6 the disclosure of information by parties, and I've expanded
7 it to include those people that were witnesses or that were
8 the Wild Wing employees essentially.

9 Earlier this -- or earlier in February I received this
10 document from Wild Wing which is WWC0031 and WWC000322. If
11 I may approach and let Your Honor see it?

12 THE COURT: Okay.

13 MR. BLAKE: This was given in lieu of answering the
14 interrogatory that was sent, and I've sent a little
15 consultation letter, letter asking that that information be
16 completed, to include the email address and last known
17 business affiliation so I can try to contact these people.
18 Again, a lot of them are young, college-age servers. I
19 know that, you know, in three years a lot of servers aren't
20 at the same number or address that they were. So, I'm
21 asking for them to complete that information, and instead
22 of giving it to me on a two-page, strange, typed up form
23 that doesn't appear to be a business record or anything
24 else, to simply answer it in line with the interrogatory
25 subject to the verification requirements that Rule 33

1 provides, and I think that will resolve that issue, Your
2 Honor.

3 MR. HOLT: Judge, thank you, Your Honor. May it
4 please the court? The, the request to us was, first, for
5 contact information of witnesses. We've delineated our
6 witnesses, as we do, and we provided the names of
7 individuals who have direct knowledge of this particular
8 incident. We've listed the doorman; we've listed the
9 particular waitress who was there.

10 This request asked for everybody, again, who was
11 working on the night of the incident, and knowing that we
12 want to press this case to trial, we complied by providing
13 the document that Your Honor has before the court, which is
14 the addresses and the contact information for these
15 individuals. Now we're hearing, okay, that's not enough.
16 Let's go get their email addresses and where did they work
17 most recently.

18 Your Honor, my question is why do we need to provide
19 that information? They now have the contact information.
20 We've said they're not related. They're certainly allowed
21 to go do what they need to do and try to find these people,
22 and that's fine, but now we're being asked to -- okay, the
23 address, the phone the number which the rule provides for
24 is not enough. So, give us the email address. Give us
25 where they worked next.

1 My, my question to the court is just when does it end?
2 We're doing the best we can. We've provided that list.
3 They're not witnesses, but we provided it anyway to speed
4 things along, and we'd ask the court to hold that
5 sufficient.

6 MR. BLAKE: I know Mr. Holt's not trying to
7 mischaracterize this. I think we're talking past each
8 other somewhat.

9 I sent a rule consultation letter saying let me know
10 if you represent these people. Let me know if you're
11 claiming that they're subject to any attorney relationship,
12 and I did not get a response to that, my rule letter
13 request. So, I haven't reached out to call them yet. If
14 they agree that I can call each one of these people myself
15 and have whatever conversations I want with each one of
16 these people, then I don't want them to give me any other
17 information about the people on that list. I will go do my
18 job ---

19 THE COURT: Well, you asked for witnesses. So, I
20 assume -- he said he gave the employee list, and then he
21 gave you the witness list.

22 MR. BLAKE: I know that, but I constantly get
23 defendants who come back at me and say you can't directly
24 contact our employees, former or otherwise. As long as ---

25 THE COURT: Do you have a problem with them contacting

1 these people?

2 MR. YARBOROUGH: Your Honor, I -- the ones we're
3 listed as witnesses are, are the ones that we would -- and
4 that we've accepted subpoenas on behalf of, and we have
5 depositions next Tuesday are the ones we would ask they not
6 contact directly. But that list I don't think has any of
7 those people on there.

8 THE COURT: All right.

9 MR. BLAKE: So, I can contact all these people?

10 MR. YARBOROUGH: Yeah. Just, I don't think, like, you
11 know, Brian and Santana and...

12 MR. BLAKE: Well, I don't think that the -- yeah, I
13 know they're on this list.

14 MR. YARBOROUGH: Yeah, yeah, that's...

15 THE COURT: All right.

16 MR. BLAKE: Okay, that resolves that. Thank you, Your
17 Honor. I appreciate your patience with us working through
18 that issue.

19 Then I've asked for the, the, the people on the email
20 that I handed Your Honor, WWC000325. I've asked for those
21 names because I'm considering those people witnesses
22 because they're involved in the scheduling of this event.
23 I've asked for their contact information, for their
24 identification, who their employer is, what their names
25 are, their full legal names, and their address and

1 telephone number. So, that's the next part of this. If I
2 could find out who those people are, that'd be great.

3 THE COURT: I assume they all worked for Vista Wild
4 Wings because they have Wild Wings emails. So, you can't
5 contact them directly if they still work there.

6 If not, can you provide an address as to where they --
7 address, last known address that you have for them?

8 MR. HOLT: Your Honor, those people I don't think have
9 worked in the store or were working at the store at the
10 time. I can find out who they are. I just -- I really
11 don't know who they are and how they're involved.

12 THE COURT: All right, then just provide that
13 information.

14 MR. HOLT: Okay.

15 MR. BLAKE: Thank you, Your Honor. Appreciate that.
16 So, that resolves that.

17 I've asked for an address for Ela Casuga, Brian Neal,
18 Andy Johnson. They've accepted subpoenas for Brian Neal.

19 I don't know whether you're accepting for Andy
20 Johnson.

21 Well, I want their address so I can send them a trial
22 subpoena. That's all I care about. I just want to be able
23 to send them a trial subpoena.

24 MR. HOLT: And again, Your Honor, these individuals,
25 why are they getting trial subpoenas when they are not -- I

1 think they're in Charlotte, too. Is that right? So, why
2 are they getting trial subpoenas in a foreign state? We're
3 not -- we've not named them as witnesses. It's beyond,
4 it's beyond me. One of them is the CFO of one of the
5 subpoena recipients that Your Honor has just indulged us
6 on. Another one is a staff accountant, and her only role
7 has been, you know, when we've got discovery requests,
8 we've had to request certain documents and she's, you know,
9 helped provide some of those things. So, these are not
10 witnesses. They're kind of back of the office
11 administrators, and it's clearly -- every time I see
12 somebody with a C in front of their title being subpoenaed
13 in a case like this, it's clear to me that they're trying
14 to harass a C-Suite individual, and that's exactly what Mr.
15 Johnson is.

16 Mr. Neal was the manager of this particular location.
17 He wasn't there the night of the incident, but we've gone
18 ahead and we've indicated we'll accept service of his
19 notice. He's closer. He's not as attenuated, so we're
20 fine with that, but to go and harass the CFO of a parent
21 company, I mean, Judge, that's, that's, I think, beyond the
22 pale, especially of a case that has \$1600 in damages, which
23 we've offered eight times the amount and managed to settle
24 already.

25 MR. BLAKE: Your Honor, a couple of things. One, I'm

1 not quite sure why Mr. Holt continues to get into
2 settlement discussions. They have absolutely zero bearing
3 on this motion.

4 Additionally, I would have loved to know that Mr.
5 Johnson and Ms. Casuga were Charlotte residents. I've
6 never been told that until Mr. Holt just spoke. I also
7 didn't know their business affiliation until Mr. Holt just
8 spoke. More importantly, if they're not witnesses, I don't
9 know why the only two people from Wild Wings that have
10 responded to discovery in the case are Ela Casuga and Andy
11 Johnson. They've -- they provided all of the information
12 used in response to the interrogatories, and Mr. Johnson
13 signed the verification under oath that every statement in
14 those interrogatories are true. So, when I conduct this
15 trial and I put those interrogatories into evidence, it's
16 Mr. Johnson I'm going to depose about the veracity of the
17 -- I mean, or that I'm going to discuss what -- the
18 veracity of the statements in discovery in front of the
19 jury. So, Mr. Johnson absolutely needs to come to trial,
20 and if the answer now is that he doesn't work for the
21 defendant and that he's in Charlotte and can't come to
22 trial, that's why I need his contact so I can do my *de bene*
23 *esse* deposition before we have to try this case, which is
24 why I've been asking for this information.

25 MR. HOLT: Your Honor, the court is well aware, and as

1 is Mr. Blake who does a significant number of defense cases
2 for companies, that the way companies are organized is that
3 it's different than when I send discovery to Mr. Finan as
4 an individual, who's an individual party, and ask him to
5 verify his responses. Obviously with a company you've got
6 all kinds of hierarchies in place, and certain divisions of
7 the company who have nothing to do with food service may
8 have a lot to do with document retention, and so that's all
9 these people have done here is their verifications are on
10 behalf of the company, not as individuals.

11 Mr. Blake indicated that, oh, he's got to talk to
12 these people individually because they have responded in
13 interrogatories. They haven't, Judge. The entity has
14 responded to interrogatories and the verification, per the
15 rule, is being sworn out by an employee. Just like if I'm
16 the secretary of a board of an entity, I'm going to sign
17 board documents all the time that have nothing to do with
18 me personally but have everything to do with the entity.

19 And so that's the only role that these people have
20 played. They're not witnesses and, you know, we've done
21 our best to get documents to them, but they have nothing to
22 do with what happened on June the 5th and whether duties
23 were breached with regard to this patron.

24 MR. BLAKE: Your Honor, I can't conduct discovery on
25 the only two people that have provided discovery responses

1 and verified to their accuracy. I don't know what I'm
2 supposed to be allowed to do in discovery. It's -- this
3 is, this is basic 101 discovery. The person that is there
4 -- Mr. Neal has given a sworn statement in this case, so
5 I'm going to bring him to trial to discuss the sworn
6 statement. Mr. Johnson has given sworn statements in this
7 case. I'm going to bring him to trial to discuss his sworn
8 statements, and if I can't reach him because I'm now being
9 told he's in Charlotte, I need to schedule a *de bene esse*
10 deposition.

11 And Ms. Casuga is the only -- or Mr. Casuga is the
12 only person that they have ever identified that has ever
13 participated in getting that law firm the information used
14 in the discovery it's provided in this case. So, again I
15 want to talk to Ms. Casuga about what she did to answer all
16 of the discovery they're complaining that I've served in
17 this case.

18 MR. HOLT: Judge, it's like deposing the records
19 custodian. That's really what we're dealing with here.

20 MR. BLAKE: We lack a rule for that in South Carolina.
21 There's not a records custodian deposition; there's not a
22 records custodian category. It's just a person whose
23 deposition I have to take.

24 THE COURT: Well, if he's, if he's saying that he's
25 their potential -- they've given a statement and he's going

1 to depose them and they may be potential trial witnesses, I
2 think he has to have the addresses to at least depose them.

3 MR. BLAKE: Thank you, Your Honor.

4 THE COURT: All right. What next?

5 MR. HOLT: Just to make, just to make clear for the
6 record, the statement was Brian Neal's. He's the local guy
7 who is being deposed. The other two haven't given any
8 statements as far as I know.

9 MR. BLAKE: I'm happy to hand up their sworn
10 verification under oath, Your Honor, and I'm happy to give
11 up their ---

12 MR. HOLT: That's the ---

13 MR. BLAKE: --- interrogatory ---

14 MR. HOLT: --- interrogatory verification at the end.

15 THE COURT: All right. Well, he needs, he needs --
16 they can -- he can get their addresses and depose them if
17 he needs to depose them.

18 MR. BLAKE: Thank you, Your Honor.

19 THE COURT: All right, what's next? Let's wrap this
20 up.

21 MR. BLAKE: The last, last issue, Your Honor, is the
22 alcohol sales. Well, one, there's an issue again. I would
23 just like again an interrogatory response. I've asked for
24 them to identify the people who were involved in the hiring
25 and training of bartenders and security staff. I've been

1 given a written email from counsel saying that there are
2 none. I just would like that in a verified interrogatory
3 response. I'm absolutely entitled to it. They knew the
4 answer. I just want it in a verified interrogatory
5 response.

6 MR. HOLT: We'll do that.

7 MR. BLAKE: So, again ---

8 MR. HOLT: We'll do that, Judge.

9 MR. BLAKE: --- they can ---

10 THE COURT: He's already said he'll do it.

11 MR. BLAKE: Thank you, Your Honor.

12 THE COURT: Let's move on.

13 MR. BLAKE: So alcohol sales finally. I have asked --
14 again, this is very much a matter of, of what evidence do I
15 have to present the alcohol consumption the night of the
16 attack of Mr. Finan to the jury. It's not information
17 that's in my client, Mr. Finan's, possession. It's only in
18 the possession of the defendant and/or potentially these,
19 these companies that they're now saying are parents of the
20 defendant.

21 So, these alcohol sales information are contained in
22 a, a point-of-sale system. You see them with those little,
23 those little registers ---

24 THE COURT: I'm familiar. Yes, sir.

25 MR. BLAKE: --- that they have, and so it's called

1 Aloha, and, and this Aloha system -- and I've included in
2 my record for the court excerpts from the manual on the
3 Aloha book that demonstrate how incredibly easy it is for
4 Vista Wings or whomever would like to provide responses to
5 the request print out summary reports and to reprint and
6 group by server, by shift the checks that they have for
7 their pay -- for their, for their customers the night of
8 the event.

9 So, I've asked for two things. I've asked for a
10 reprint of the checks from second shift. What I've been
11 given is a box of receipts which are credit card receipts
12 which show some of the sales for the evening. They don't
13 show, for example, the sales to Mr. Halacca. They don't
14 shows the sales to, to Mr. Chase Lightener. They don't
15 show sales to some of the critical people involved in this
16 melee. And, and again I'm also trying to get aggregate
17 sales data. I'm trying to get how much did you sell during
18 the second shift when my client was, was attached versus
19 how much do you normally sell when you're not having one of
20 your major year concert events so that I can say ladies and
21 gentlemen of the jury, they had a duty to provide
22 additional security on Saturday, June 5th, versus what they
23 normally provide because look at their alcohol sales
24 changes. Look how the volume increased from Tuesday night
25 when I might go down there with my kids and eat wings

1 versus Saturday night when it's a big rally concert event.

2 So, I've asked for summary data. I don't want all the
3 detailed things from the second shift on other months.

4 I've asked for the summary reports that are capable of
5 being printed out of that Aloha system for the thirty days
6 of June essentially. That way I get three weekends so that
7 I can control for spikes on the weekends and the typical
8 weekly volume so the jury can have -- we can do a
9 demonstrative, show the jury a graph by day during the
10 month of June 2015 their alcohol sales and demonstrate the
11 spike of sales that were occurring on that night. And then
12 I'd like to get the detailed receipts. Like I said, these
13 detailed customer checks related to those alcohol sales so
14 that I have more information about what was actually
15 consumed the night of the attack. And their position has
16 been we've given you the credit card, signed-off paper
17 records. We shouldn't have to give you these electronic
18 records.

19 Initially I was told it was going to take 189 hours to
20 print that off. When I got the manual, I found that no,
21 that's incorrect. The manual shows how summary reports --
22 it gives page by page screenshots of how you can go click a
23 few buttons and print off summary reports to generate this
24 information very quickly and print or export it
25 electronically and let me print it. But I just want to

1 print this so that I can get it and put together a
2 demonstrative to the jury showing alcohol sales by that
3 month and then alcohol sold that evening by categories.
4 Beer, shots, wine, liquor. Was it a night where any
5 reasonable person running a restaurant in Columbia would
6 know, yeah, I probably need to have some security there
7 before people get drunk and do something stupid?

8 MR. HOLT: Thank you, Your Honor. With respect to the
9 concern about a couple of patrons' receipts not being in
10 the batch that we produced, I would like to note for the
11 court that the -- anybody purchasing anything with cash is
12 not going to show up in this report. So, that is probably
13 the explanation for that.

14 We have provided a checkout summary for the day of the
15 incident. Of course as the court knows, the standard
16 against what Wild Wings is going to be judged is the duty
17 of a reasonable establishment in the same position. And so
18 why he needs thirty days of reports of what people drank is
19 just again I think characteristic of the breadth that's
20 being requested in this case.

21 So, we have gone -- we've provided him all the data of
22 people who were sitting on the other side of the restaurant
23 having burgers and fries with their friends, and then we've
24 provided the alcohol data. By the way, for the court's
25 edification, far more food was sold that night than

1 alcohol, and so we've provided this information to him.

2 You know, I would submit to the court thirty days is just
3 quite overly broad in this case.

4 MR. BLAKE: And, Your Honor, I've spoken with counsel,
5 and Mr. Yarborough can stand up and confirm. I sat outside
6 this courthouse at our last hearing and said if defendants
7 will concede that some lesser period of time -- because
8 what I can't have is they come to trial and say, well,
9 they're not giving you enough information, jury. They're
10 only showing you fourteen days. That's an unfair sampling
11 of what we've done. If they'll concede that fourteen days
12 is a relevant sample time to -- and they're not going to
13 try to defend that spike by saying I'm not showing the jury
14 enough aggregate data, I'll limit it to how much time they
15 want because I know there's a spike that night. I've
16 talked to the former manager of Wild Wings. I understand
17 exactly what happens during these events, so I'm not
18 concerned about what that graph is going to demonstrate,
19 but I can't have the defense attack my visual, saying,
20 well, this is misleading. There's only five data points on
21 this chart.

22 So, I say if y'all concede that thirty is fine, we'll
23 do thirty. If you'll say fourteen is fine, we'll do
24 fourteen, but I can't be undercut by their arguing I don't
25 have enough data.

1 THE COURT: Obviously thirty days is too broad.

2 MR. BLAKE: Your Honor, it's one report they can have
3 with the push of a button. I don't know what the burden is
4 with that breadth. It's a, it's a summary report with the
5 push of a button.

6 THE COURT: I know that's what you're saying. I'm not
7 sure if ---

8 MR. BLAKE: I've got the ---

9 THE COURT: --- it is or not.

10 MR. BLAKE: --- handbook and the materials, Your
11 Honor. I can show it to you.

12 Do the defendants agree it's a summary report that can
13 be generated with a push of a button?

14 MR. YARBOROUGH: Your Honor, to be completely honest,
15 I have no idea how it works.

16 MR. BLAKE: Well, I -- we can walk through the
17 material, Your Honor. I've got it in the tabs in the
18 notebook that I provided to the court.

19 THE COURT: Why don't you do the two weekends prior to
20 because doing -- I mean, I don't understand why you need
21 the week. Obviously the weekends are going to be greater
22 than the weekdays and Monday or a Tuesday night.

23 MR. BLAKE: I agree, Your Honor, and that's what I'm
24 trying to show. I'm trying to show that there are times
25 when you know your alcohol sales are going up versus when

1 they're not. So, it's on Tuesday maybe not to have
2 security, but maybe on Friday and Saturday nights you
3 should, and certainly on Friday and Saturday nights when
4 you're having a major event that your marketing machine is
5 pushing, you do.

6 THE COURT: All right, so two weekends ---

7 MR. BLAKE: And so it has to be in context.

8 THE COURT: --- the two weekends before, I think,
9 provide the context. I don't -- I think a jury can come to
10 the conclusion that alcohol sales at a restaurant are going
11 to be higher on a weekend than they are on a Monday night.

12 MR. BLAKE: They are.

13 THE COURT: I don't know if you, I don't know, I don't
14 know if you need all to have all of that data to be able to
15 come to a conclusion that restaurant sales are going to be
16 higher on a Thursday, Friday, Saturday night than they
17 would be on a Monday, Tuesday, Wednesday night.

18 MR. BLAKE: I agree.

19 THE COURT: So the weekends, and the weekends would be
20 Thursday through Sunday.

21 MR. BLAKE: Your Honor, that's fine. Can we have a
22 corresponding agreement that, that at trial we're not
23 allowed to argue ---

24 THE COURT: I can't make them agree to that. I mean

25 ---

1 MR. BLAKE: I'm not asking for you ---

2 MR. HOLT: Judge.

3 MR. BLAKE: I'm not asking -- we're looking at
4 discovery. I'm asking under Rule 37, therefore, they'll be
5 prohibited from putting on an argument or evidence at trial
6 that that data is insufficient for the jury to make the
7 finding. That's my concern.

8 THE COURT: You need to take that up with the trial
9 judge.

10 MR. BLAKE: Thank you, Your Honor.

11 THE COURT: All right, thank you.

12 MR. HOLT: Thank you, Judge.

13 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 2ND DAY OF MARCH, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 20TH, 2018

Exhibit 18
Motion to Reconsider

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT

RICHARD A. FINAN,) C.A. NO.: 2016-CP-40-07109

Plaintiff,)

V.)

VISTA WINGS, LLC d/b/a WILD) Deposition of
WINGS CAFÉ - COLUMBIA, BRENT) BRIAN NEAL
WESTON, AND AARON MILLER,) March 13, 2018

Defendants.)

Deposition on oral examination of BRIAN NEAL,
reported by Lisa F. Huffman, Court Reporter and Notary
Public in and for the State of South Carolina; said
deposition taken pursuant to notice of deposition, by
agreement and in accordance with South Carolina Rules of
Civil Procedure, at Sweeny, Wingate & Barrow, P.A., 1515
Lady Street, Columbia, South Carolina, on March 13,
2018, at the hour of 9:04 a.m.

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BRIAN NEAL

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Page 6	Page 8
1 STIPULATIONS 2 It is hereby stipulated and agreed by and 3 between counsel for the respective parties that 4 the Witness will waive the reading and signing 5 of the deposition transcript. 6 Whereupon, 7 BRIAN NEAL, 8 having been first duly sworn, 9 was examined and testified as follows: 10 DIRECT EXAMINATION 11 (By Mr. Yarborough) 12 Q. Good morning, Mr. Neal. We've met before, but I 13 want to introduce myself formally for the record. 14 My name is Shaun Blake. I represent a gentleman 15 named Richard Finan. He is a Plaintiff in a 16 lawsuit that I believe you know, at least, a little 17 bit about. 18 A. Uh-huh. 19 Q. The Defendant in that lawsuit is Vista Wings, LLC. 20 Is that your employer? 21 A. That's the building I work at for Wings Over 22 America. 23 Q. Okay. All right. Let me break that down. Let's 24 get rid of some formalities first. Have you ever 25 given a depo before?	1 communications with your attorney at any time 2 except when you're in a deposition. And there are 3 a couple of unique situations that your attorney 4 will advise you of and we'll talk about if they 5 come up. But for the most part, now that you're 6 under oath, understand that even if we're on a 7 break you can't have privileged communications with 8 your attorneys at this point. 9 If you have a conversation with anybody, which 10 is perfectly allowable, I'm allowed to, when we 11 come back onto the record, ask you about the 12 contents of those conversations under oath. And 13 it's not a proper objection or assertion by you to 14 say I'm not going to tell you because I believe 15 it's attorney/client privileged. Okay? 16 A. (Witness nods head.) 17 Q. We have, and you nodded at that answer and I 18 appreciate that, we have a weird way of 19 communicating here because Lisa is our court 20 reporter today and she is taking down everything 21 that we say as a part of a permanent record. 22 A. Uh-huh. 23 Q. She has a difficult time in her record recording 24 body language, body gestures and even uh-huh's and 25 uh-uh's, they can be confusing when they translate

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1 to a transcript.

2 And so I'd ask that you try to give a verbal

3 response that's clear and understandable so that

4 your record of your testimony is accurately

5 reflecting what you intended to say today. Okay?

6 A. Yes, sir.

7 Q. Please don't "sir" me. Please don't "sir" me.

8 Just a yes or no are fine or whatever explanation

9 you feel you need to give is okay. I do not try to

10 trick witnesses. It's not my deposition style.

11 This is a discovery deposition, we're not at

12 trial. A trial will try to trick you all the time

13 but we're not there right now. Okay? So in this

14 context I want you to let me know, please, if you

15 don't understand my question. Okay?

16 A. If I can, yes.

17 Q. We have a goal today of getting as much

18 information, at least that's my goal. My goal is

19 to have clear communication with you and get the

20 information that I need to understand from you.

21 I can't do that if you don't understand my

22 question and you certainly don't want to have to

23 live with inaccurate testimony if we do end up

24 trying this case. I'm sure you would like your

25 answers to accurately reflect what you intend to

Page 10

1 say; is that correct?

2 A. Correct.

3 Q. So just, again, if there's anything ambiguous let

4 me know. I talk fast due to just years of bad

5 habits so if I'm mumbling or trailing off at the

6 end of a sentence, please say, hey, I didn't follow

7 you and I will do my best to rephrase the question

8 in a way that is more sensible. Okay?

9 A. Sounds good.

10 Q. Also, I don't want to you use terms of art in an

11 inartful way and I'm not going to presume that I

12 understand the terms of your industry as well as

13 you do so if I'm misusing something or if I'm using

14 it out of context and it's confusing you say that,

15 that's not what I understand "point of sale" to

16 mean in my context, for example. Okay?

17 A. Okay.

18 Q. If I'm misusing a term of art or using a term of

19 art that doesn't have a clear understanding to you,

20 let's stop at that point and do our best to define

21 those terms. Okay?

22 A. I'll do my best.

23 Q. All right. Let's see. What else am I supposed to

24 tell you before we get into the nuts and bolts of

25 things. I think that's it. If you have any

Page 11

1 questions about any aspect of this deposition

2 really you're supposed to direct those to me.

3 Your counsel will from time to time object

4 because he will find some flaw in the way that I

5 have worded a question. And so you may hear him

6 say things like "object to form" or "objection" or

7 he may specify what type of form objection he's

8 making and all that's fine.

9 You're generally supposed to disregard those

10 comments. He's preserving something on the record

11 for us to discuss with the judge later about what

12 aspects of the testimony you give here today can be

13 used at trial. Okay?

14 A. Okay.

15 Q. So, again, if you have any questions about this

16 process going forward feel free to direct them to

17 me and I'll do my best to answer them. Okay?

18 A. Sounds good.

19 Q. We have your county, you live in Lexington County,

20 that's correct?

21 A. Yes, sir.

22 Q. What's your full address, your home address?

23 A. 212 Chestnut Oak Lane, West Columbia 29169.

24 Q. You said Chestnut Oak?

25 A. Lane.

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1 Q. And then that's in West Columbia. And what's the

2 zip code?

3 A. 29169.

4 Q. And that's the same address that appears on your

5 drivers license.

6 A. Yes, sir.

7 Q. How long have you lived there?

8 A. It's going on two years. Wait a minute. Three

9 years.

10 Q. Three years. Okay. Do you own that property or do

11 you rent that property?

12 A. It's in my wife's name.

13 Q. Do you have any plans on moving in the next six

14 months?

15 A. If the occasion pops up, but it won't be out of

16 state. It will be probably to Lexington.

17 Q. Is your wife looking to sell the house right now?

18 A. We haven't set it up with a realtor yet though.

19 We're trying to find the one we want first.

20 Q. I understand. I didn't place you under subpoena

21 today because Wild Wing's counsel in this case, and

22 when I say Wild Wing, I'm kind of colloquially

23 referring to Vista Wings, LLC which is the

24 Defendant in this case.

25 But Wild Wing's counsel was able to accept

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1 what we call a notice of your deposition today. So
2 I didn't go through the process of formally placing
3 you under subpoena but as of now you're not a party
4 to this lawsuit.

5 When I say a party, I mean, you're not either
6 a plaintiff or a defendant in this lawsuit so for
7 you to come to trial I would have to place a trial
8 subpoena on you or you would have to come willingly
9 because your attorneys have requested you to come.

10 At this point have you made any decisions
11 about your willingness to attend the trial in this
12 action?

13 A. I mean, if I have to I don't think I would have a
14 choice.

15 Q. Why do you feel that way?

16 A. I mean, I work for Wild Wings so if they need me to
17 testify about something I'll do my best.

18 Q. Do you have any plans on changing your employment
19 in the next six months?

20 A. No, sir.

21 Q. How long have you been with Wild Wing?

22 A. Going on ten years.

23 Q. So earlier I asked if you worked for Vista Wings,
24 LLC and you told me that, that's the location where
25 you work and your employer is a company called

Page 15

1 A. I do.

2 Q. -- direct deposit? And do you recall the name of
3 the corporate entity that's on that paycheck?

4 A. Vista, LLC.

5 Q. Is it Vista, LLC or --

6 A. Vista Wings, LLC.

7 Q. Vista Wings, LLC?

8 A. Uh-huh. Yes, sir.

9 Q. You said the marketing department. Who are the
10 persons that you know are in that marketing
11 department?

12 A. Ashley Sadeghy.

13 Q. How do you spell that last name? I know Lisa would
14 like help with that one.

15 A. Hold one moment.

16 Q. Thank you.

17 A. S-a-d-e-g-h-y. I'm pretty sure that she just
18 recently got married so that probably changed.

19 Q. I understand. So Ashley Sadeghy, do you know what
20 her title is?

21 A. She is the, I believe, VP of Marketing. And then
22 she's got a couple people that work underneath her
23 that I only know on a first name basis.

24 Q. What are those first names?

25 A. Lauren and Allison.

Page 14

1 Wings Over America; is that correct?

2 A. Yes, sir.

3 Q. How do you know that your employer is Wings Over
4 America?

5 A. Because that's the name of my corporate office and
6 that's where my bosses work.

7 Q. So where is that corporate office?

8 A. Charlotte, North Carolina.

9 Q. Do you know the address of that office?

10 A. 605 Regency Executive Parkway.

11 Q. Is that in South Charlotte? Where is that in
12 Charlotte; do you know?

13 A. Yeah, South Charlotte.

14 Q. Seems to be where most of the executive building
15 space is; it's not in uptown.

16 A. I can look up the zip code if you need me to.

17 Q. No, that's okay. I can look that up. I actually
18 used to live in South Charlotte once upon a time.

19 So when you say your bosses work there, who do you
20 mean?

21 A. My CEOs, CFOs, that's where my regional managers'
22 corporate desks are, marketing department. That's
23 where my paycheck comes from.

24 Q. Let's work backwards. Do you get a physical
25 paycheck or do you get a --

Page 16

1 Q. There have been some documents produced in this
2 case that have some other people on emails there in
3 the 2015 time period that I understand to be
4 marketing folks.

5 Do you know if there are marketing
6 professionals that work for Wings Over America or
7 on behalf of Vista Wings, LLC that don't work in
8 the Charlotte office, but work in other locations?

9 A. There's some field marketing promotions specialists
10 that live throughout the state.

11 Q. Do you know any of those folks?

12 A. Savannah Lane.

13 Q. L-a-n-g?

14 A. L-a-n-e.

15 Q. Thank you.

16 A. And then Emma Woodrow, I think is her last name.
17 They weren't currently in their position though at
18 the time of the incident.

19 Q. Neither one of those names were, I don't believe,
20 were on the documents I'm referencing. So Savannah
21 Lane and Emma Woodrow are what you would consider
22 to be field marketing?

23 A. Yeah, they go to the stores and help with in-house
24 promotions.

25 Q. So besides Ashley, Lauren, Allison, Savannah and

Page 17

1 Emma, are you aware of any other current marketing
2 professionals that work for Vista Wings, LLC or for
3 the corporate office?
4 A. No, sir.
5 Q. And then you said there are regional managers who
6 keep desks in the Charlotte office; is that
7 correct?
8 A. Yes, sir.
9 Q. Who are those individuals?
10 A. Zach Herrmann is over the Upstate of South
11 Carolina, Phil Norris is over Columbia and
12 Charlotte, Mike Clark is over, I believe, it's
13 either Wilmington or Raleigh or maybe both. And
14 then Ray Lauman who is over Charleston, Hilton
15 head, Bluffton and Jacksonville, Florida.
16 Q. How do you spell Ray's last name?
17 A. L-a-u-m-a-n.
18 Q. And you said Mike Clark, does he have an "e" on the
19 back of his name or you're not sure?
20 A. He does not.
21 Q. And then Zach Herman was H-e-r-m-a-n?
22 A. H-e-r-m-a-n-n.
23 Q. Thank you. This is why I don't assume. So Phil
24 Norris is responsible, as the regional manager, for
25 this Columbia region?

Page 19

1 for most businesses but mainly service industry and
2 restaurants.
3 Q. Was Bill Richardson at any point your direct
4 supervisor?
5 A. He was.
6 Q. During what time period?
7 A. About the same time. Whenever he was over Vista he
8 was over myself at the Harbison location.
9 Q. Do you know where Mr. Richardson currently lives?
10 A. I do not.
11 Q. So I counted four regional managers. Were there
12 four regional managers in 2015 as well?
13 A. To the best of my knowledge.
14 Q. CFO, you pluralized CFOs. Are there more than one
15 CFOs?
16 A. There's one but there's been multiple since the --
17 the date.
18 Q. Is the current CFO a man named Andy Johnson?
19 A. He is.
20 Q. Do you have any direct interaction with Mr.
21 Johnson?
22 A. Very rarely.
23 Q. On what occasion do you have to interact with Mr.
24 Johnson?
25 A. If there's any kind of accounting issues that I

Page 18

1 A. Correct.
2 Q. Do you directly report to Mr. Norris?
3 A. Yes, sir.
4 Q. Is there any person that you report to in-between
5 you and Mr. Norris?
6 A. No, sir.
7 Q. Was Mr. Norris the regional manager for Columbia on
8 June 5th, 2015?
9 A. No, sir.
10 Q. Who was?
11 A. An educated guess would probably be Bill
12 Richardson.
13 Q. And you actually did a great job, I should have
14 said this, for everyone's sake if you're not
15 confident on an answer and you're making educated
16 guesses, just let us know. That way we don't have
17 anything --
18 A. That's not in stone.
19 Q. Yeah, exactly.
20 A. To my best recollection.
21 Q. That's good. That's good. That will help everyone
22 at trial, I promise. So Bill Richardson, do you
23 know what Bill Richardson currently does?
24 A. He is a consultant for his own personal business,
25 Alphawolf Consulting. He does business consulting

Page 20

1 have questions about or I do email him from
2 occasion if we have a charge back issue with a
3 credit card being processed incorrectly. In the
4 last year I've probably spoken to him personally
5 once or twice.
6 Q. Does he have an accounting department underneath
7 him that you interact with more often?
8 A. Yes, sir.
9 Q. Who in that accounting department do you more
10 commonly deal with?
11 A. Ela. E-l-a. Last name C-a-s-u-g-a.
12 Q. Ela Casuga?
13 A. Yes, sir. You pronounced that way better than I
14 would have.
15 Q. Anybody else in that accounting department do you
16 regularly interact with?
17 A. Not to my knowledge.
18 Q. Who is the CEO that you referenced? The current
19 CEO.
20 A. Currently, we do not have a CEO.
21 Q. Who was the last CEO?
22 A. Tom Lewison.
23 Q. Lewison, can you spell that one for us?
24 A. L-e-w-i-s-o-n.
25 Q. That's what I would have guessed. When did Tom's

Page 21

1 term as CEO end?

2 A. Within the last forty-five days.

3 Q. Was he the CEO on June 5th, 2015?

4 A. He was.

5 Q. Do you know why Mr. Lewison's term as CEO ended?

6 A. I do not.

7 Q. Do you know if your corporate parent company is a

8 publicly traded corporation?

9 A. I believe -- I'm pretty sure it's owned by an

10 investment group.

11 Q. Do you know the name of that investment group?

12 A. Axum.

13 Q. Axum Capital Partners?

14 A. I believe so. To the best of my knowledge.

15 Q. So I recall seeing in the corporate records Wings

16 Over America as a name that popped up. But do you

17 know Wings Over America in and of itself is not a

18 corporate name.

19 All the corporate names in North Carolina and

20 South Carolina have to have a corporate designation

21 on the back of it like a LLC or Inc. Do you know

22 the full corporate name of Wings Over America?

23 A. I do not.

24 Q. When you'd go --

25 A. Not to my recollection.

Page 23

1 A. Before there I worked at Inland Containers in

2 Lexington.

3 Q. Inland Containers, what does that company do?

4 A. We manufactured cardboard boxes. I did.

5 Q. How long were at Inland Containers?

6 A. Two years, I believe.

7 Q. Before you were working at Inland?

8 A. I worked at Sox and Freeman's Tree Removal for a

9 year.

10 Q. What about before that?

11 A. I was a bartender for Red Lobster for about two and

12 a half years. And then before that I worked for

13 Lexington County EMS as an EMT basic. And if you

14 want to go back to my first job I was a bagger at

15 Piggly Wiggly. And that's my entire work history.

16 Q. Thank you. So you were EMT over at Lexington

17 County EMS?

18 A. Yes, sir. And that was for three years.

19 Q. Where did you go to high school?

20 A. Airport High School.

21 Q. Did you graduate?

22 A. Yes, sir.

23 Q. What year did you graduate?

24 A. 2001.

25 Q. Did you do any formal schooling, training,

Page 22

1 Q. That's okay. Do you go to that Charlotte from time

2 to time?

3 A. I do.

4 Q. Is there a sign outside that says Wings Over

5 America?

6 A. There's a sign outside that says Wild Wing Café

7 Corporate Office.

8 Q. Got it. So you started working for Wild Wing Café,

9 I'm just using that term colloquially here, about

10 ten years ago?

11 A. August 2018 -- oh, sorry, 2008.

12 Q. How old were you at that time?

13 A. Oh, wow. Twenty-four --

14 Q. Twenty-four?

15 A. -- I believe. Twenty-five-ish. Started as a

16 server at the Vista location.

17 Q. What did you do prior to August 2008?

18 A. Directly prior?

19 Q. Yeah.

20 A. I was a server at LongHorn for about month.

21 Q. Was it the LongHorn down there in the Vista?

22 A. Yes, sir.

23 Q. And then I'm just going to kind of work backwards

24 with your work history from there. So what did you

25 do before you worked at the LongHorn?

Page 24

1 certificate program after that?

2 A. I went to Midlands Tech to become an EMT.

3 Q. And you completed that training?

4 A. Yes, sir. I did work there.

5 Q. Any other formal education, training, certificate

6 programs following your time at Midlands Tech?

7 A. No, sir. Besides specialty classes that I've taken

8 with Wild Wing Café.

9 Q. Let's talk about those speciality classes. I don't

10 want to skip those. What types of specialty

11 classes and when have you taken those?

12 A. I don't recall the date, I'd have to look that up.

13 But I was Management ServSafe certified for serving

14 food to the public.

15 Q. So Management, and you said, ServSafe certified?

16 A. Yes, sir.

17 Q. And that's S-e-r-v, like serve; I serve food?

18 A. Yes, sir.

19 Q. ServSafe certified. Okay. And I don't need

20 precise dates but do you recall what year you

21 accomplished that certification?

22 A. Let me check my wallet.

23 Q. Thank you.

24 A. 6/19/2013. And it expires 6/19/2018. So I need to

25 do it again.

Page 25

1 Q. So is that training offered by Wild Wing itself or
2 is there a third-party that offers that?
3 A. It was offered by Wild Wing.
4 Q. So they --
5 A. They paid for it.
6 Q. Thank you. You caught on to my distinction. They
7 paid for you to do that, but it's a third-party
8 that puts on that training?
9 A. Yes, sir.
10 Q. Do you know the name of that third-party that
11 issues you that card?
12 A. ServSafe.
13 Q. ServSafe, is that one word or is that two words?
14 A. One word.
15 Q. Can I just look at that card real quick?
16 A. That's just for food. We were also separately
17 certified for alcohol.
18 MR. BLAKE: For Lisa, it's S-e-r-v-S-a-f-
19 e.
20 Q. And this indicates that there was an exam that you
21 had to take to obtain this certification?
22 A. Yes, that was a eight to ten hour class followed by
23 an exam.
24 Q. Did you pass that exam on your first attempt?
25 A. Yes, sir. I got the highest score in the company.

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1 email for these types of communications?
2 A. Yes, sir.
3 Q. Do you know that email address?
4 A. It's my email address.
5 Q. What's that email address?
6 A. BrianNeal, B-r-i-a-n N-e-a-l, @WildWingCafe.com.
7 We also -- each store has its own email as well.
8 Q. When say each store gets, that means you have a
9 different Brian Neal email address?
10 A. No, it's -- currently it's Vista@WildWingCafe.com.
11 Q. Who has access to that email box?
12 A. That is for the GM and all the managers and then my
13 specific email is for me only.
14 Q. I'm not the most tech savvy guy in the world so if
15 you don't know this I'll be --
16 A. Join the club.
17 Q. -- understanding. Yeah. Is that -- do you know if
18 that's an Outlook -- Microsoft Outlook?
19 A. I have no idea.
20 Q. What do you open to access those emails?
21 A. Gmail.
22 Q. It's Gmail based. Can you log on, for example, at
23 your house if you needed to look at it?
24 A. Yes, sir.
25 Q. Do you have to go through a VPN to do that or can

Page 26

1 Q. Well done.
2 A. I missed one question. It was the trick one at the
3 end.
4 Q. You said this one relates to --
5 A. Food.
6 Q. -- food and is it just safe food practices or what
7 does it cover?
8 A. It covers how to properly manage the food, how long
9 to keep it -- how -- how -- what temperature to
10 heat it up to based off of the food type. How to
11 properly store the food so there's no cross-
12 contamination and just proper food handling
13 procedures so we don't get anybody sick.
14 Q. I worked in restaurants I very much understand
15 that. So -- and you said Wild Wing -- did they ask
16 you to take this or they just said this is
17 something you can do? Tell me about --
18 A. They -- they asked us. They -- they sent out an
19 email, well, obviously, a few years back to just to
20 see who -- which managers were not certified, which
21 ones were and if the ones that were not certified
22 to schedule for a test. It's a requirement as a
23 manager to have.
24 Q. I got you. So that's not the first time we've
25 talked about emails. Are you using a specific work

Page 28

1 you just open up a Gmail account and log into it?
2 A. You can just open up Gmail.
3 Q. And that's true for both of those inboxes, the
4 Brian Neal and the Vista inbox?
5 A. Yes, sir.
6 Q. Are those the same emails that, at least the Brian
7 Neal, is that the same email that you were using on
8 June 5th, 2015?
9 A. That's what I would have been using while I was at
10 the Harbison location.
11 Q. Perfect. Okay. So you haven't had a change in
12 email?
13 A. No, sir.
14 Q. How far back does your inbox go? Do you clean your
15 inbox out a lot or do you leave your work-related
16 emails in there?
17 A. I leave all the emails in there. Occasionally,
18 I'll go through and clean out random stuff at the
19 very end. Whether if I get some emails from
20 restaurant magazines or something that's not really
21 work-related.
22 Q. But if it comes from marketing, for example, that's
23 in your inbox?
24 A. Yes, sir.
25 Q. If it comes from the corporate office, that's in

Page 29

1 your inbox?

2 A. Yes, sir.

3 Q. And if you're talking about, let's say, like, an

4 accounting issue with Ela or Mr. Johnson, that's

5 going to still be in your inbox?

6 A. To the best of my knowledge.

7 Q. You don't go in and delete your sent emails, do

8 you?

9 A. No, sir.

10 Q. Some people are more organized than I am and they,

11 in their inboxes, create subfolders I've learned

12 and they'll categorize their emails. Do you go

13 through the process of having subfolders and

14 dropping things in?

15 A. I don't have time for that. No.

16 Q. Neither do I.

17 A. I just try to make sure they're all opened and

18 responded to.

19 Q. I got my, need to respond to list, down to a couple

20 hundred right now and I feel pretty good about

21 that.

22 A. Yeah, I'm at about eighty. I am comfortable with

23 that. Keep it in the two digits, I'm good.

24 Q. So besides this ServSafe certification that you

25 underwent, tell me what other certifications that

Page 31

1 training?

2 A. How to properly serve guests, how to recognize

3 intoxicated patrons, how to react to intoxicated

4 patrons and just the steps to giving quality

5 service and making sure everybody goes home safely.

6 Q. So how does the training that you have through

7 reserving compare to the last course that you had

8 through ServSafe on alcohol?

9 A. It was almost exactly the same.

10 Q. Was the ServSafe course that you had prior to this

11 reserving course, was it also an online course?

12 A. It was.

13 Q. Did it also have a test component to it?

14 A. It did.

15 Q. Was it, like, an eight to ten hour course like the

16 food safety course?

17 A. No, it's -- it's about a three hour course.

18 Q. Any reason why you went through Reserving this time

19 around instead of ServSafe?

20 A. That was just the company that our home office

21 decided to go with this time.

22 Q. How did they communicate, the home office, did they

23 communicate that change and service provider for

24 training?

25 A. Well, February of 2017, they reached out to the

Page 30

1 you have taken in relation to your Wild Wing --

2 A. Well, I've had -- this would be my second alcohol

3 ServSafe certification. The first one was through

4 ServSafe, the second one was from, what is that --

5 Q. This is reserving.

6 A. -- reserving. Yeah.

7 Q. It looks like you just got this one issued to you.

8 A. Yeah. I did. My other one just recently expired.

9 Q. So the first one with ServSafe, you did -- this

10 ServSafe certification is five years long. Do you

11 know if your --

12 A. The alcohol's three years.

13 Q. The alcohol's three years. Okay.

14 A. I feel like I should have a notepad.

15 Q. Lawyers hate trees. So tell us about this course.

16 How long was the training for this reserving

17 course?

18 A. It's -- it's about three hours online.

19 Q. Did it have videos or was it just reading material?

20 A. Reading material read to you. The only stuff that

21 it didn't read was anything pertaining specifically

22 to a certain state. And it also had interactive

23 videos. And after each section it had quizzes and

24 then at the end it had a pretty extensive exam.

25 Q. What type of topics were covered in the reserving

Page 32

1 current regionals and GMs to make that all the

2 staff was certified properly and they paid for

3 every staff member in the company to be certified

4 that wasn't already certified.

5 Q. So when you say staff members, what all categories

6 of employees fall in that?

7 A. Front of the house employees.

8 Q. So --

9 A. So that would be bartenders and service.

10 Q. So it paid for, in 2017, or I guess, February of

11 2017, the home office, when you say the home

12 office, you're talking about the corporate office

13 up in Charlotte we talked about, right?

14 A. Correct.

15 Q. They reached out and said we need to make sure all

16 the employees have gone through which training

17 sessions?

18 A. The alcohol training. Only management goes through

19 the -- the food serving training because we're

20 pretty much in charge of all that?

21 Q. Was February 2017 the first time that all employees

22 that were not management were required to go

23 through that alcohol training?

24 A. No, sir. It's -- it's happened multiple times

25 throughout my career here. We have a pretty high

Page 33

1 turnover rate so they tend to do it every couple
2 years to my knowledge.
3 Q. How do they communicate it typically?
4 A. Through email. They email the general manager and
5 the regional manager and then the regional manager
6 follows up with the GM as to their progress on
7 getting everyone certified.
8 Q. So it goes regional and the GM and then do you
9 delegate that out within each store? Actually, I'm
10 making an assumption; I shouldn't assume. Is there
11 a general manager for each location?
12 A. There is.
13 Q. So when the regional manager emails the general
14 manager for the location, correct?
15 A. Correct.
16 Q. And says we need to have another round of
17 certifications and training?
18 A. Correct.
19 Q. Does, at least you in your capacity as general
20 manager, did you delegate that down further within
21 the store or was that your responsibility as
22 general manager to make sure that this 2017 wave of
23 certification happened?
24 A. Well, it was my responsibility to make sure that it
25 was -- that it took place with all the employees

Page 35

1 A. No, sir. It was just a printed out copy of the
2 schedule and we just scratched people off as they
3 became certified.
4 Q. And then what did you require of the employees that
5 took it from home to demonstrate they had gotten
6 the certification?
7 A. They would either printout the certificate. At the
8 end of the -- the course it will send you a -- a
9 printout where you can print it out right there,
10 they take a picture of it, and that's about it.
11 They would just show us where they got certified.
12 Q. So at least in February of 2017 the then staff of
13 the Vista location of Wild Wing Café, there was a
14 two week window in there where all of the front of
15 the house folks went through alcohol safety
16 training?
17 A. All that weren't already certified. Like I said,
18 we have pretty -- lots of turnovers in service
19 industry. People graduate, new kids come to school
20 so some of them were currently certified at the
21 time so they didn't have to take the class.
22 Q. How did they demonstrate to you that they were
23 already certified and the didn't need a class?
24 A. Pull their card out of their wallet and show me.
25 Q. Do you require employees to keep their card on

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1 but we definitely delegate out to the other
2 managers for shifts that I'm not working.
3 So if I'm off and, you know, manager A is
4 working that night, I'll give him the list of who's
5 not yet certified. And if any of those people are
6 working that night it's his job to bring them in
7 and certify them and then notified the GM that it
8 was completed.
9 Q. I understand. So our these employees doing the
10 certification training in the store?
11 A. Some of them did. Some of them did it in the store
12 in the office, some of them do it at home. It's
13 all online so it's, kind of, at their leisure. As
14 long as it's done by the deadline.
15 Q. Who sets the deadline?
16 A. The corporate office. They gave us about two weeks
17 to get everyone certified. That's kind of
18 impressive with fifty-plus servers.
19 Q. Absolutely. So you mentioned that there's
20 essentially a list that was maintained to confirm
21 who had or had not gone through certification yet,
22 correct?
23 A. Correct.
24 Q. What happened to that list? Do you still have that
25 list?

Page 36

1 them?
2 A. We do not. I mean, they can always ---most of them
3 keep it on them but they can always pull it up
4 online.
5 Q. Certainly. So if you needed to go off and reprint
6 your certification through Reserving right now, you
7 could do that by going online and pulling up an
8 online version of your certificate?
9 A. Yes, sir.
10 Q. What about the ServSafe, do you have online access
11 for that one as well?
12 A. Yes, sir.
13 Q. So we've covered of the three year ServSafe
14 program. We've covered the five year food ServSafe
15 program. Are there other trainings beside the food
16 and the alcohol certifications we've talked about
17 that we haven't covered yet?
18 A. I mean, besides regular in-house training.
19 Q. Okay. Let's talk about the in-house training. Who
20 puts on the in-house training?
21 A. Well, the -- which ever manager is in charge of the
22 department, kind of, takes the lead on it. The GM
23 follows up to make sure that it's done properly. I
24 mean, and each position kind of has own training
25 routine.

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1 Q. So as a GM, you're sort of -- you're not
2 necessarily putting on the training, you're making
3 sure that the, I guess, the, well I don't want to
4 put words in your mouth. Who do you directly
5 supervise in putting on these in-house trainings?
6 A. Typically every restaurant has a bar manager, a
7 front of house manager and a kitchen manager which
8 are all salary managers. Now, if your shorthanded
9 then the GM does do it all.
10 Q. I got you. And have you ever had to do it all
11 before?
12 A. I have.
13 Q. Is there an in-house training schedule?
14 A. We put together a schedule whenever we hire an
15 employee.
16 Q. How do you put that schedule together?
17 A. It's just based on the position. Servers get two
18 hosting shifts, two food running shifts and five
19 serving shifts with a trainer. And then before
20 they go on the floor they have to take certain
21 tests.
22 Q. So they spend a certain number of shifts working
23 with a trainer, seeing the proper way. I might
24 quickly call that shadowing. Is that what they're
25 doing? Are they shadowing the trainer?

Page 38

1 A. They are.
2 Q. And then when you say, test, is it like a written
3 test?
4 A. It is.
5 Q. Who propagates the written test? Who makes the
6 test for them?
7 A. Well, the tests are already made from the home
8 office. Servers do a food facts test to make sure
9 that they know the menu. Bartenders do a food
10 facts test and an alcohol test to make sure that
11 they know the proper drinks, proper pouring
12 procedures.
13 The bartenders also have to do a pour test in
14 front of the bar manager and/or GM to make sure
15 that they know how to properly pour the correct
16 amount of alcohol. And then before the bartender
17 can be let go, if they're a new bartender they are
18 to become ServSafe certified.
19 Q. And again, does the general manager create this
20 regimen or is this regimen propagated by the home
21 office?
22 A. The home office.
23 Q. How do they tell you as general manager this is
24 what you and/or your bar manager, front of house
25 manager and kitchen manager need to do? How do

Page 39

1 they communicate that to you?
2 A. Well, I mean, they -- they communicated it to me
3 when I first became a manager, when I went through
4 my management training, the proper steps of
5 training.
6 Q. Let's talk about that management training. Where
7 did you do that management training at?
8 A. North Charleston. The Wild Wing Café on Rivers
9 Avenue.
10 Q. What year did you do that?
11 A. It was February of 2011.
12 Q. Was that before Axum Capital Partners ultimately --
13 A. It was.
14 Q. -- acquired it? Do you know if the system has
15 changed since Axum Capital Partners acquired an
16 interest in Wild Wing?
17 A. They've revamped the actual written test, but for
18 the most part the training is still the same.
19 Q. Do you know what year Axum acquired an interest?
20 A. I believe 2012 to my knowledge. Are you done with
21 this?
22 Q. Oh, yeah.
23 A. I just don't like clutter.
24 Q. Before I go further, let's just walk through your
25 work history. So you started as a server in the

Page 40

1 Vista location of Wild Wing Café in August 2008.
2 A. I believe it was August. If remember it was before
3 the football season of 2008.
4 Q. There you go.
5 A. Because that was very interesting. Never worked in
6 a restaurant that has such support about the
7 Gamecocks.
8 Q. Thursdays with Coach Spurrier I guess were going on
9 at that point in time? Wasn't he doing his
10 interview down there?
11 A. No. No, that was -- that was right before he
12 acquired the coach's job.
13 Q. So at that point in time do you know where your
14 paychecks came from? Do you know the company that
15 was paying you back at that point in time?
16 A. It was still Vista, LLC.
17 Q. Do you mean Vista Wings, LLC?
18 A. Yes.
19 Q. That's okay.
20 A. Yes, I do. Sorry.
21 Q. Are you sure about that or are you fuzzy on that?
22 A. No. No, I mean, I'm pretty -- I'm pretty sure. I
23 mean, to my knowledge that's what it was. I don't
24 recall it changing.
25 Q. Okay. Do you know who owned Vista Wings, LLC at

Page 41

1 that point?

2 A. It was Diane and Cecil Crowley.

3 Q. Can you spell Crowley.

4 A. About as good as you can.

5 Q. Yes.

6 A. C-r-o-w --

7 Q. L-e-y?

8 A. -- l-e-y.

9 Q. Yeah. Do they live down in the Beaufort area?

10 A. I'm not sure where they lived. I know it was on

11 the coast.

12 Q. Did you ever see them in the Vista Wings location

13 where you worked at?

14 A. They had to come in there a couple times.

15 Q. Did you ever meet personally?

16 A. I did.

17 Q. Do you know if it was Diane, Mrs. Crowley, that

18 sold Vista Wings, LLC or their interest in Vista

19 Wings, LLC to, ultimately, Axum Capital Partners?

20 A. They did.

21 Q. They did. And that's what you think happened around

22 2012?

23 A. Yes, sir.

24 Q. So when did your job change from being a server?

25 A. February 2011. I was promoted to salary manager at

Page 43

1 Q. I got you.

2 A. -- they're in charge of any extra training that

3 someone might need, they're in charge of the

4 overall area, cleanliness, scheduling, staffing,

5 but they are also a salary manager on duty so when

6 they're working their shift they're in charge of

7 the whole restaurant.

8 Q. Do you always have a front, back or at least you

9 attempt to always have, I understand there's an

10 exigent, but you always have a front, back and a

11 kitchen manager simultaneously in the restaurant?

12 A. It just depends on the day.

13 Q. What makes it differ?

14 A. Well, I mean, you do a \$15,000 Saturday compared to

15 a \$4,000 Monday. People like to have days off,

16 also.

17 Q. Certainly. Weekends are generally busier than the

18 weekdays, right?

19 A. Yes, sir.

20 Q. Is that ratio a typical ratio? A \$15,000 Saturday

21 versus a \$4,000 Wednesday?

22 A. It just depends on the season and locations.

23 Q. Can you walk us through a, sort of, at least for

24 the Vista location -- actually you're the general

25 manager now, right?

Page 42

1 the Columbiana location.

2 Q. So when you say a salary manager, is that, like, is

3 that a general manager, is that the front bar --

4 A. It's a -- it's an assistant manager.

5 Q. An assistant manager.

6 A. And then once you get in your location, your

7 general manager at the time figures out which

8 position he wants you to go to --

9 Q. And so --

10 A. -- whether it be a front of the house or back of

11 house or bar.

12 Q. So the front of the house, back of the house, and

13 the bar managers are also assistant managers?

14 A. Correct.

15 Q. And they report directly to the general manager?

16 A. Correct.

17 Q. And correct me, I don't want to put words in your

18 mouth if I am saying something incorrectly, but

19 just for the sake of time, they, when they're out

20 there are supervising the employees working in

21 those respective sections; is that correct?

22 A. No.

23 Q. Okay.

24 A. They are in charge of that department. They are in

25 charge of hiring --

Page 44

1 A. Correct.

2 Q. What are the busy seasons and what are the slow

3 seasons?

4 A. Well, busy season is, obviously, football since

5 we're located near USC. And then it also depends

6 on how well the Gamecocks play. Summertime is our

7 slower season. The campus is empty so there's tens

8 of thousands of people that aren't there during the

9 summertime. So obviously that's going to impact

10 the business.

11 Q. So summer slower, fall with football is busy.

12 Holidays, are holidays busy or slow?

13 A. Depends on the holiday.

14 Q. I got you. What about, like --

15 A. Christmas we're kind of slow because there's not a

16 whole bunch of shopping downtown. I know Christmas

17 is busy for the Columbiana location because it's

18 right next to the Columbiana Mall.

19 Q. Got you.

20 A. We have busier days, obviously, downtown with New

21 Year's or St. Patty's Day or some sort of

22 celebration. Fourth of July.

23 Q. Do you use promotions to try to increase the volume

24 of sales during those slower periods?

25 MR. YARBOROUGH: Object to the form.

Page 45

1 A. Like what do you mean?

2 Q. Well, if you know that the summer is going to be a

3 slower time, do you do special promotions, special

4 events to do something to try to pick business up

5 during the slower seasons?

6 A. We do have limited time offer food menus that go

7 out during the summertime.

8 Q. What's the purpose of having these limited time

9 offer food menus, for example?

10 A. To keep it fresh, I mean, people don't want to come

11 in and eat the same thing every day. Give our

12 customers something new to eat.

13 Q. How do you advertise that to the customer?

14 A. It depends on the home office. Sometimes it's

15 radio, sometimes it's posters in the restaurant,

16 sometimes it's Facebook posts, e-blast for our

17 loyalty members.

18 Q. I didn't know you all had a loyalty program.

19 A. We do.

20 Q. Are there certain benefits to being a loyalty

21 member other than having access to promotions?

22 A. Yeah, every time you use your loyalty card you

23 acquire points. Once you acquire a certain number

24 of points, five hundred, for example, you get a

25 \$25.00 gift card on your loyalty card that you can

Page 47

1 trainer for management for MITs, which is Manager

2 in Training.

3 Q. Is the home office corporate trainer still a

4 position under the current ownership of management?

5 A. I do not -- I do not know. I haven't been through

6 management training in a while. I know there was a

7 point last year where I was training managers at

8 the Columbiana location.

9 Q. You were training managers for other locations but

10 training them at the Columbiana location?

11 A. Correct.

12 Q. I got you. What about in 2015, was there a home

13 office corporate trainer that you're aware of in

14 2015?

15 A. Not that I'm aware of. They -- it was, kind of a,

16 I don't know, like a team effort, like, where I did

17 the position trainings where I trained them on how

18 to do the grill, how to serve tables, how to do

19 office paperwork. And then they went to the home

20 office for a week or so to do whatever office

21 training they needed them to do. Whether it be

22 inventory or payroll. They did a lot of shadowing

23 for different positions.

24 Q. So Tammy Griffin for example, she is one of these

25 salaried managers, isn't she?

Page 46

1 use.

2 Q. Are there any restrictions on the use of the gift

3 card?

4 A. No, sir. Not to my knowledge.

5 Q. What are typically the slowest days of the week?

6 A. Monday, Tuesday. First part of the week when

7 people are going back to work.

8 Q. What are your busiest days typically?

9 A. Friday, Saturday when most people are off work.

10 Q. On the weekends are there some shifts that are

11 busier than others?

12 A. Night shift is busier than day shift.

13 Q. So you were a server from 2008 until February of

14 2011. February 2011 you became a salaried manager.

15 You went down to the North Charleston location on

16 Rivers for training. Do you recall who you trained

17 with?

18 A. Charles Warren.

19 Q. W-a-r-r-d?

20 A. Warren.

21 Q. Oh, sorry. Warren.

22 A. W-a-r-r-e-n, I believe.

23 Q. And he was a general manager at the North

24 Charleston location at that time?

25 A. No, at the time he was the home office corporate

Page 48

1 A. Correct. She's the general manager of the

2 Columbiana location.

3 Q. She's now the general manager of the Columbiana

4 location?

5 A. She is.

6 Q. In 2015, was she a salary manager of the Vista

7 location to your knowledge?

8 A. I believe she was an hourly manager. I don't know

9 if she was salary or not.

10 Q. Can you help me understand, in the 2015 time frame,

11 the difference between an hourly manager and a

12 salary manager?

13 A. Well, we still currently have hourly managers.

14 It's -- an hourly manager just doesn't have the

15 responsibility of a salary manager. They pretty

16 much come in and just help run the shift and have

17 keys to the front door.

18 They're not responsible for gaining sales or

19 training or scheduling or hiring. It's kind of

20 like minor leagues before you become a salary

21 manager.

22 Q. That makes sense. I keep getting us off track. I

23 apologize. I'll try to be more linear. So when

24 did your position change? So you go through this

25 training in North Charleston, where do you go to

Page 49 1 work as a manager for the first time? 2 A. Columbiana. 3 Q. And that's out there by the mall over there on 4 Bower Parkway; is that right? 5 A. Correct. 6 Q. Do you know who you replaced? 7 A. Brandon Studebaker. 8 Q. Do you know what he went on to do? 9 A. Last I heard he moved to Charleston. 10 Q. Do you know if he still works at Wild Wings? 11 A. He does not. He left shortly before I got there. 12 Q. I got you. 13 A. Under his own accord. 14 Q. I should have asked you that when I was going 15 through your job history. Have you ever been fired 16 from any of those jobs we talked about? 17 A. I was actually, yes, I was terminated from 18 Lexington County EMS. 19 Q. What did you get terminated for? 20 A. Following the rules as my supervisor told me. 21 Q. You were not following the rules, you mean? 22 A. I was following the rules. 23 Q. But he terminated you for not following the rules? 24 A. Yes. 25 Q. I got you.	Page 51 1 Q. That's pretty bad. I guess, red tape with a quasi- 2 governmental entity and things like that. So aside 3 from that though, that's the only time you've ever 4 been terminated from a position? 5 A. Correct. 6 Q. So, like, the LongHorn, how come you were only 7 there for a month? 8 A. Well, I went through three weeks of training, I got 9 out of training and then on a lunch shift I forgot 10 to ring in someone's salad and my supervisor came 11 to me and told me that I had to repeat the training 12 process. 13 And I told him that my bills would not allow 14 me to repeat the training process, it's minimum 15 wage. So I actually walked from that location to 16 Vista. 17 Q. Filled out an application? 18 A. Yes, sir. 19 Q. What was the title of the position that you had 20 whenever you went over to the Bower Parkway 21 location? 22 A. Well, I came in the front door as an assistant 23 manager, salary assistant manager within the first 24 week, Lester Procter, the current GM, appointed me 25 as the front of house manager so I was over the
Page 50 1 A. No, he terminated me for following the rules. 2 Q. Well, that doesn't seem fair. Tell me the context 3 of that. 4 A. Well, I was young and I was not familiar with the 5 substations. They were -- they did a lot of moving 6 around. I started out in West Columbia/Cayce and 7 then when they started moving me to Chapin and 8 Batesburg and every now and then I would be two or 9 three minutes late for a shift. And instead of 10 calling the medics or EMTs that I was relieving I 11 would call the home office and let them know that I 12 was running two minutes late. 13 So whenever he terminated me he looked me dead 14 in the face and he said why didn't you just call 15 the station and tell them you were running two 16 minutes late. 17 Q. Right. I got you. 18 A. He was like when you call us we had to document it. 19 Q. I got it. 20 A. So he told me to wait six months and reapply and 21 he'd give me my job back but at the time I wound up 22 deciding that, that wasn't what I wanted to do. 23 Q. That makes sense. That makes sense. 24 A. Like I said, never been fired for following the 25 rules.	Page 52 1 servers and hostesses. 2 I did that for a while and then August of 2012 3 Lester was relocated to the epicenter location to 4 be the general manager there. I was made interim 5 GM and then they pretty much never found a 6 replacement so I became GM. 7 I figured I'd go ahead and finish the whole 8 process for you before we get off track again. 9 Q. That's perfect. So that's 2012. What month was it 10 when you became the -- 11 A. August. 12 Q. August? 13 A. August is the magic month. 14 Q. Sounds like it. You said that he went to the 15 epicenter location? 16 A. Yes, sir. 17 Q. Where's that? I don't know the epicenter location. 18 A. Downtown Charlotte. 19 Q. Okay. I do know that location. And then your 20 interim had just sort of naturally became a 21 permanent position? 22 A. Correct. 23 Q. And you were at the Bower Parkway location until 24 when? 25 A. February of 2017.

Page 53

1 Q. And that's when you went to the Vista location?
 2 A. Correct.
 3 Q. Who did you replace at the Vista location?
 4 A. Ashley Edens.
 5 Q. E-d-e-n-s?
 6 A. E -- E-d-e-n-s. Yeah.
 7 Q. And she was the prior general manager? Do you know
 8 --
 9 A. He -- he was.
 10 Q. I'm sorry. He. That was a terrible assumption
 11 about the Ashley name. So do you know if he was
 12 the general manager on June 5th, 2015?
 13 A. No, I don't believe he was.
 14 Q. Who do you believe was?
 15 A. I think it was Craig Hefner, if I can recall
 16 correctly. He is now currently the GM of
 17 Sandhill's location.
 18 Q. When you say, he is, you mean Craig is now?
 19 A. Correct.
 20 Q. Did it go Craig Hefner, Ashley Edens, you?
 21 A. Correct.
 22 Q. What happened to Ashley Edens?
 23 A. He voluntarily terminated himself to go sell real
 24 estate.
 25 Q. He resigned or he was about to get terminated?

Page 54

1 A. He resigned. Sorry. That's just how it's setup in
 2 our system.
 3 Q. No, I got it. I got it.
 4 A. We click terminated and it ask why. Was this
 5 voluntary, was this --
 6 Q. Right. That system, is that the Workspaces system?
 7 When I say, Workspaces, so there's a company down
 8 in Charleston called People Matter. They do
 9 software that's an HR software.
 10 A. That's one of our -- that's one of our websites we
 11 use. We do, I'm referring to the Aloha system, our
 12 front of house computer system.
 13 Q. Oh, okay. So Aloha has a way to intricate. So if
 14 Craig left -- sorry, if Ashley Edens left separate
 15 from the Workspaces stuff there's a place in Aloha
 16 itself to indicate he was terminated --
 17 A. Correct.
 18 Q. -- voluntarily terminated.
 19 A. You have to do it in both systems though.
 20 Q. You do have to?
 21 A. Yes, sir.
 22 Q. Is that a corporate policy or why do you have to do
 23 it in both systems?
 24 A. Because we pay money on our PNLs for however many
 25 employees we got per employee so I want to keep my

Page 55

1 PNL as low as possible. So when someone leaves I
 2 go in and make them inactive in both systems.
 3 Q. Oh, okay. I got you. So -- interesting. Seems to
 4 be unnecessarily redundant.
 5 A. One's for hiring and one's for payroll.
 6 Q. I got you. So the Aloha's for payroll?
 7 A. Correct.
 8 Q. That makes more sense. I got you. And the
 9 Workspace is just for hiring?
 10 A. Correct.
 11 Q. Which one of those systems do you use to mark, hey,
 12 somebody's received their ServSafe certification or
 13 their alcohol certification?
 14 A. That would be -- the home office would -- would put
 15 it in one of those systems. I don't -- I don't
 16 recall. If I had to make a guess I would say
 17 People Matter. That's where all the documents go
 18 up whether their writeups or position changes.
 19 Q. That's not one of your job responsibilities, that's
 20 just something you believe the home office is
 21 managing the input of certification data?
 22 A. To my knowledge, yes.
 23 Q. That's not something that somebody working
 24 underneath you is charged to do, right?
 25 A. No, sir.

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1 Q. Is there an HR liaison or, you know what I mean,
 2 like a human resource person --
 3 A. There is. There's two.
 4 Q. Who are those people?
 5 A. Karina, K-a-r -- K-a-r-i-n-a, Petteway, P-e-t-t --
 6 P-e-t-t-e-w-a-y, is our HR payroll personnel. And
 7 then Tracy White is, I believe, her position is VP
 8 of HR. T-r-a-c-y White. Everyone knows how to
 9 spell White.
 10 Q. Do you know how long they've had those positions?
 11 A. I do not.
 12 Q. Do you recall --
 13 A. Tracy -- Tracy is within the last year. Karina
 14 might be -- might be on two years right now.
 15 Q. Do you recall their predecessors?
 16 A. Lindsay Burrows was HR before.
 17 Q. Do you believe Lindsay Burrows was HR in the 2015
 18 time period?
 19 A. If I recall correctly, yes. It's hard answering
 20 questions from two years ago.
 21 Q. I know it is. I can't tell you what I did last
 22 week sometimes. So how did you, when the 2017
 23 certifications happened, for example, the way we
 24 talked about in February of 2017, how did you
 25 communicate to HR all 51 or however many of my

Page 57

1 employees are certified and done. How was that
2 communicated up the chain?
3 A. We just informed the regional manager that it was
4 one hundred percent complete.
5 Q. I'm just asking it this way to confirm it didn't
6 happen. What you did not have to do, for example,
7 is to send your regional manager or HR screen shots
8 or physical evidence of the certifications for each
9 staff member, correct?
10 A. I honestly don't recall.
11 Q. This is probably a distinction I want to make sure
12 that I understand so I'm not making some incorrect
13 assumptions here.
14 I understand from other things that have
15 happened in this case that there are some locations
16 of a Wild Wing Café that are corporate locations
17 meaning that they have some type of direct
18 relationship with the corporate office and there
19 are other that are franchise locations.
20 Is that a correct understanding or do you
21 think I'm saying something that's inaccurate?
22 A. No, it's correct. We have franchise stores and
23 corporate stores.
24 Q. Have you ever worked in a franchise store?
25 A. I have not.

Page 59

1 Q. Are there other daily reports that you get emailed
2 about all the locations besides the sales report?
3 A. No, sir. Not really.
4 Q. Do you know why you get a sales report daily?
5 A. So I know where my sales are at.
6 Q. Is that what showing you? They're showing you
7 where you fall within line with the other stores?
8 A. They're showing us where we fall within line with
9 other stores, if we're up or down on that day,
10 where we're at year-to-date and month-to-date.
11 Q. One of your responsibilities is to make sure you
12 have efforts in place to increase sales, correct?
13 A. Yes, sir.
14 Q. And you were distinguishing earlier, like, that's
15 not a responsibility of an hourly manager but that
16 is a responsibility of a salary manager, correct?
17 A. Correct.
18 Q. How do you communicate your sales objectives to the
19 front of the house manager, the bar manager, the
20 back of the house manager?
21 A. We have weekly meetings.
22 Q. Who attends those weekly meetings?
23 A. The managers.
24 Q. That was a bad question. So are there people from
25 the corporate office that attend those weekly

Page 58

1 Q. Do you know what stores are franchised stores
2 versus which ones are corporate stores.
3 A. I'd have to look it up but I know -- I know the
4 majority -- I know all the corporate stores.
5 Q. You do know. So how many corporate stores are
6 there?
7 A. I believe we're at 14 right now, maybe -- maybe 15.
8 Q. And where would you, you said I'd have to look it
9 up, where would you look that up?
10 A. Well, I mean, we get a sales report daily that
11 shows where stores are at in sales and it's broken
12 down and the -- the top section is corporate and
13 the bottom section is franchise. That would be the
14 easiest way to find it.
15 Q. Who sent you that sales report?
16 A. Ken Hutchins, our IT support.
17 Q. You said Kim or Ken?
18 A. Ken.
19 Q. Is that H-u-t-c-h-i --
20 A. N-s, I believe.
21 Q. And does Ken Hutchins work in the corporate office
22 as well?
23 A. He does.
24 Q. And how does he transmit that sales report?
25 A. Email.

Page 60

1 meetings?
2 A. No, sir.
3 Q. It's you and the managers?
4 A. Me, my salary managers and then we also -- we do
5 have the hourly managers sit in so they can further
6 learn more of their trade.
7 Q. But that's more part of their training?
8 A. Yes, sir.
9 Q. Do you have written agendas for these meetings?
10 A. I put them together the day before the meeting.
11 Q. How do you send out the agendas?
12 A. I just print them out and lay them out on the table
13 before they get there. And they all come in an sit
14 down and we -- we go over it depending on what
15 we're going over that week, whether it be sales or
16 comps or --
17 Q. When you say comps, I want to make sure the
18 record's clear, what do you mean by comps?
19 A. Comps, just like if we have a certain percentage we
20 should hit as far as comping off food or beverages
21 so it's -- we don't want to go over our goal. And
22 if we did go over our goal then we need to know and
23 what we can do to prevent it next time.
24 Q. I understand. So this is my lack of sophistication
25 into restaurant industry coming into play. So who

Page 61

1 has the power to issue a comp?

2 A. All managers -- all salary managers.

3 Q. Does a server on the floor, for example, can they

4 issue a comp?

5 A. No.

6 Q. So if something has to be comped a manager has to

7 approve it?

8 A. Correct.

9 Q. And that can include an hourly manager?

10 A. Typically, no.

11 Q. Typically, no. Okay. But if there's not, if

12 someone's covering because there's just a shortfall

13 on salary managers, I'm going to use Santana

14 Griffin when she was an hourly manager for example.

15 So let's say there wasn't a salary manager for the

16 front of the house that night and she was helping

17 to fill in, could she approve a comp?

18 A. She could.

19 Q. That's just hypothetical, I'm not saying that ever

20 happened, I'm just using that to make sure I'm

21 understanding. So how does a manager approve a

22 comp? Is there something special that has to be

23 keyed into Aloha to do that?

24 A. It just depends on what type of comp it is. I

25 mean, first there's a table visit to the table to

Page 63

1 phone. But mostly the Aloha system.

2 Q. When you say "app" on your phone, what app is it?

3 A. Pulse.

4 Q. Can you spell that for me? P-u-l-s-e; is that

5 right?

6 A. Yeah.

7 Q. What does the Pulse app do?

8 A. Well, it shows me the -- if I pulled it up right

9 now it shows projections for sales for today.

10 Later on in the evening when I'm not at work I can

11 monitor what our comps are at, what our voids are

12 at, monitor my labor, how many tables are in the

13 restaurant, how many tickets are open, what's on

14 the tickets.

15 Q. Wow, that's pretty advance stuff.

16 A. It's a love/hate relationship I have with it.

17 Q. I was about to say, it probably makes it more

18 difficult to unplug.

19 A. A little bit.

20 Q. You're working when you're not working. Wow.

21 Okay. So the Pulse app, does it sync with Aloha?

22 How does it know this information?

23 A. It syncs with Aloha -- with NCR Aloha.

24 Q. Were you using the Pulse app whenever you were

25 manager back in the 2015 time period out at Bower

Page 62

1 find out what's -- if there's anything we can do to

2 help the customer. If the customer needs anything,

3 you know, if their foods burnt and they would like

4 some more, you know, just to be a face of the

5 restaurant.

6 And then they go to the front of the house

7 computer with the server, pull up the table, and

8 comp it off for whatever reason it may be. If it's

9 burned it would be a kitchen comp, if it's rang in

10 wrong it would be a server comp, if the customer

11 just decided they don't like it, it would be a

12 customer comp.

13 Q. That makes more sense.

14 A. And then the manager has to put in their password

15 or slide their manager card to take it off the

16 screen so the customer doesn't get charged for it.

17 Q. I got you. So when you're having these weekly

18 meetings you have some data that is sort of

19 aggregated, I guess, from the previous week where

20 you're able to go through and say, here's our sales

21 numbers, here's our comp numbers; is that right?

22 A. Correct.

23 Q. Does that data come from the Aloha system?

24 A. It can. It can come from the Aloha system, it can

25 -- some of it can come from an app I have on my

Page 64

1 Parkway?

2 A. I don't believe so. I don't -- I don't we -- we

3 had acquired that app at that time.

4 Q. That's a newer functionality?

5 A. I've had it over a year now I know of.

6 Q. Did your corporate office require you to put that

7 app on your phone?

8 A. They don't but they advised it.

9 Q. Yeah. How do they send you the advice that you

10 should do that?

11 A. We just had it in one of our GM meetings one day

12 when we were at the home office. I believe it was

13 back when the home office was in Charleston. We

14 were having a meeting and they came across the app

15 and just told everyone it would be a good idea to

16 put it on their phone.

17 Q. I got you.

18 A. It's a new toy. Everybody wants a new toy.

19 Q. So did you have to have IT support to help sync the

20 Aloha data with the app on your phone?

21 A. No, you just download the app and they gave you a

22 generic password to put in, put in the password, go

23 in, change it to what you want your password to be

24 and you're hooked up.

25 Q. But like I couldn't download the Pulse app and

Page 65

1 access --

2 A. Not without the password and the username.

3 Q. I'm with you. So who gave you the -- did IT

4 support give you the password and username or is

5 that -- did that come from NCR Aloha?

6 A. IT.

7 Q. IT. Okay.

8 A. In particular Joey Gibson. I don't specifically

9 remember his title at the time.

10 Q. That's okay.

11 A. He's kind of a multiple title type guy.

12 Q. I think a lot of IT people end up falling into that

13 role. My brother's one and every time I talk to

14 him he's learning some new trick of the trade.

15 A. Right.

16 Q. Seems like he wears a lot of different hats at his

17 job. So that app is realtime updating you with, I

18 guess, whatever the servers are putting into NCR

19 Aloha?

20 A. I think it might have, like, a five to ten minute

21 delay.

22 Q. I got you.

23 A. But it's pretty close to realtime. I guess it

24 depends on what's going on up in the clouds.

25 Sometimes it updates instantly, sometimes it takes

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1 the house goal is a 7.5. Overall labor is sixteen

2 percent that you want to hit based off your sales.

3 Q. So it's tracking, I guess, the hourly wages of the

4 people that are currently working that night?

5 A. It is.

6 Q. Do you use that information sort of like mid-shift

7 to say we've got to send some people home, we're

8 not -- we're too slow to justify having "x" number

9 of servers working up-front right now?

10 A. I mean, we -- we use it as a tool to figure out

11 when we do need to make cuts. I mean, I don't just

12 cut based off of the fact that we're slow mid-shift

13 because I look back at the previous week and

14 previous two weeks, previous year and try and see

15 if there's a trend, like, okay, maybe, we're slow

16 at eight o'clock on this day because we were slow

17 at eight o'clock last week, but if we're going to

18 get a pop at ten o'clock, I want to make sure we

19 have staff on.

20 Q. I got you.

21 A. It's a roll of the dice. Sometimes you keep them

22 on and you don't get that pop.

23 Q. How can you, I mean, how mid-shift are you capable

24 of looking at data from a week ago or a year ago, I

25 mean, how are you able to make that on the fly

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1 a few minutes.

2 Q. Is that only something accessed at the general

3 manager level or do other salary manager have

4 access to that app?

5 A. All salary managers have access to it.

6 Q. What about the hourly managers?

7 A. They don't. I mean, if, towards the end of their

8 training whenever they're about to become a salary

9 manager, then they would have access. I mean, in

10 all honesty, if they asked for it, there's no real

11 wrong reason for them not to have it.

12 Q. Certainly. It just gives them access to more

13 information. So you said you can monitor your

14 labor through the app. When you say monitor labor,

15 that's a, I want to make sure that, that's not a

16 term of art, what do you mean by monitor you labor?

17 A. Well, we have a certain amount of dollars based off

18 of our sales to spend on labor so if we're not

19 making money we don't need to be spending money.

20 Q. Does the app show you this is the amount of money

21 you have to spend on labor?

22 A. No, it doesn't.

23 Q. Where is the --

24 A. It's -- it's broken down into percentages. I just

25 know that back of house goal is an 8.5, front of

Page 68

1 decision?

2 A. The app allows me to look back at the week before,

3 the year before, two years before.

4 Q. So even though you've only had the app for little

5 over a year, the data that's in the app goes

6 further back in time?

7 A. Correct.

8 Q. How far back does it go?

9 A. I haven't looked. I know if doesn't go back to

10 2015.

11 Q. It does not go back to 2015?

12 A. It does not.

13 Q. So they didn't give you, like, a two year trend so

14 you could see two years ago we were busy on August

15 9th on last year, we were slow on August 9th.

16 A. The furthest I've ever looked back on it, it's been

17 about a year from whatever current date I'm looking

18 at.

19 Q. It's interesting. And you said it can do

20 projections. Does it automatically give you

21 projections or do you have to put in ranges to --

22 A. No, it automatically gives a projection for the day

23 based off of last year and last week.

24 Q. Can you do the same thing without being in the app

25 by looking at, like say you're in the -- let's say

Page 69

1 you are in the restaurant itself. Can you log into
 2 one of those NCR Aloha terminals and get the same
 3 projections?
 4 A. No. You have to physically make them.
 5 Q. How do you physically make them?
 6 A. I would look at last week, I would look at last
 7 year, and try and figure out an average. And that
 8 would be the educated guess.
 9 Q. I got you. So --
 10 A. There's no real -- there's no real predicting what
 11 you're going to do. You can do your best but that
 12 doesn't mean people are going to come in.
 13 Q. Do you have to crunch the numbers or will it
 14 calculate the projection for you if you put in the
 15 date range? In other words, if I said last week,
 16 will it give you, like, run you an average real
 17 quick or do you have to sit there and manually --
 18 A. Manually.
 19 Q. -- calculate it out?
 20 A. I mean, it's just like I said, it's just an
 21 educated guess. If last week we did twenty-five
 22 hundred dollars and last year we did three
 23 thousand, I'm going to project twenty-seven-fifty.
 24 Q. In the Aloha system can you look and say because
 25 I've got x number of people working right now my

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1 A. I cannot.
 2 Q. Do you know why?
 3 A. We just recently got a new computer and I don't
 4 believe that, that was one of the files that was
 5 transferred over.
 6 Q. When you say recent, how recent?
 7 A. Within six months.
 8 Q. But prior to that you could have gotten 2015
 9 schedules?
 10 A. It was -- it was possible. When I first got there
 11 that computer had a whole lot of data on it a long
 12 time ago.
 13 Q. When you first got there in February of 2017, is
 14 that right?
 15 A. Correct.
 16 Q. Who had access to that computer before you?
 17 A. Every manager that was there before me.
 18 Q. I got you. So this is like in an office in the --
 19 A. Correct.
 20 Q. How many computers are typically in that office?
 21 A. One.
 22 Q. So if the manager needs to get on a computer that's
 23 the computer they're getting on?
 24 A. Correct.
 25 Q. What about the like the training if someone was in

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1 current labor cost is this, can you do that in
 2 Aloha or do you have to manually calculate that,
 3 too?
 4 A. You got to manually calculate that, too.
 5 Q. So the app does give you some significant more
 6 functionality and your ability to --
 7 A. Makes it a little easier, a little smoother.
 8 Q. Yeah.
 9 A. We do, whenever we do our labor though, we do look
 10 at prior year, prior week, come up with an educated
 11 number like I said earlier and then that's what we
 12 base our labor off of when we do our schedule.
 13 Q. Do you have to do the schedule or do you push that
 14 duty down?
 15 A. Currently, I do the schedule. I do -- we have a --
 16 the management team does a rough draft for the
 17 front of house and bar, I do the kitchen schedule
 18 and then whenever they -- they hand me their
 19 handwritten schedule and I type it up and review
 20 and make any alterations that I feel need to be
 21 made.
 22 Q. Do you keep old schedules?
 23 A. Yeah. All the schedules are saved on the computer.
 24 Q. Can you get schedules from the June 2015 time
 25 period?

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1 there doing in-house training, like a server doing
 2 like the ServSafe, was that computer they would
 3 use?
 4 A. Correct. If they weren't doing it at home or these
 5 days on their laptops sitting at one of the tables.
 6 Q. Who swapped out that computer, do you know?
 7 A. I know Ken Hutchins was part of the swapping out.
 8 I don't know if he actually did the physical
 9 swapping out or what.
 10 Q. How do you know he was part of it?
 11 A. Because he was the one I called to say -- when I
 12 said I needed a new computer and he made it happen.
 13 He's our IT guy so -- I wasn't there the day of.
 14 Q. I got it.
 15 A. I came into a new, fancy computer.
 16 Q. That's always nice.
 17 A. Always.
 18 Q. Are the schedules, once they're made, are they
 19 uploaded in the Aloha system?
 20 A. No, they're just saved on our desktop and then hung
 21 up in the designated areas.
 22 Q. Do you save your weekly meeting agendas that you
 23 layout for folks at the meeting?
 24 A. I'll take notes kind of like you guys are doing
 25 right now. But I don't save them.

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1 Q. I understood, and again, please, correct me if I'm
2 putting words in your mouth. I understood that you
3 typed up an agenda, you laid it out -- you printed
4 it out and laid it out for people, do you keep
5 those?
6 A. No, I write myself an agenda in a legal pad and
7 then I'll print out whatever documents I want to go
8 over whether it be ranking reports, sales reports,
9 comp reports, any kind of new thing that we're
10 going to be doing in the upcoming weeks so that all
11 the managers are aware.
12 Q. And when you say "ranking reports", that's a new
13 term for me, what does that mean?
14 A. Well, once a week, typically once a week we get an
15 email from our COO. He put together something
16 called a ranking report to kind of show where you
17 stand from first to last in all the corporate
18 restaurants.
19 And then it just breaks it down to sales,
20 comps, cost of goods, which is controlling your
21 products, labor, and to see where you rant with the
22 other corporate stores. Noone wants to be on the
23 bottom.
24 Q. It's a competitive between the stores?
25 A. It is.

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1 A. For the most part.
2 Q. So Sharon Hooks was a regional manager at that
3 point in time?
4 A. Correct.
5 Q. And she was spread kind of thin? I've seen Sharon
6 Hooks on emails. Is she still with the company?
7 A. She is. She's the GM of the epicenter right now.
8 Q. Was that a demotion for her?
9 A. They lost the GM so she kind of did the same thing
10 I did, stepped into the role --
11 Q. I got you.
12 A. -- to help the store. Sorry.
13 Q. That's okay. She was the regional manager over you
14 in 2015?
15 A. No, 2015, I believe it was Bill Richardson.
16 Q. You told me that already. I'm sorry. If I'm
17 asking you the same question twice, tell me that
18 where we don't waste time. I try not to do that.
19 So did it go from Bill Richardson to Sharon Hooks?
20 Was that the progression of regional managers?
21 A. It went from Bill Richardson to David Estes. And
22 then it went to Sharon Hooks. David Estes was
23 regional for about a week.
24 Q. What happened?
25 A. I believe he quit.

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1 Q. How good was your, before you came to the Vista
2 location when you were at Bower Parkway, where did
3 you typically fall in those rankings?
4 A. I was number one.
5 Q. You were always number one?
6 A. I was.
7 Q. That's awesome. So --
8 A. The majority of the time.
9 Q. -- so why did they take, if you were doing so well
10 at that location, how come you had to come over to
11 the Vista location; do you know?
12 A. Well, at the time I -- we had a manager who was
13 training to be a general manager so they wanted --
14 he was my assistant GM, and they kind of wanted him
15 to run that store a little bit.
16 And we had a current regional manager, Sharon
17 Hooks, who was -- had more stores than a typical
18 regional manager because I guess they were short
19 staffed. So I stepped into a role for about thirty
20 days to help her watch over Columbia.
21 And the Vista was down in sales and had some
22 customer complaints so they sent me down there to
23 see what I could do to help.
24 Q. You're being humble. You came to help turn the
25 Vista store around; is that right?

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1 Q. I think you've told me the current regional is Phil
2 Norris, correct?
3 A. Correct.
4 Q. Do you know how long he's been the current
5 regional?
6 A. Six to eight weeks.
7 Q. Six to eight weeks. That's not very long at all.
8 Do you know his -- do you remember his predecessor?
9 A. Sharon Hooks.
10 Q. So she's very recently made this move over to
11 epicenter?
12 A. Correct.
13 Q. Got you. Got you. Got you.
14 MR. BLAKE: Let's mark this real quick.
15 (PLAINTIFF'S EXHIBIT 1 MARKED FOR
16 IDENTIFICATION PURPOSES (1 page) - AFFIDAVIT
17 OF BRIAN NEAL.)
18 Q. All right. We've marked a document as Exhibit 1 to
19 your deposition. That's what that sticker on the
20 bottom means. This purports to be an affidavit of
21 you. Can you confirm that, that's your signature
22 on the page?
23 A. It is.
24 Q. Do you recall placing your signature on that page?
25 A. I don't recall when, but I obviously did sign it.

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1 Q. It's got a -- there's a sworn to and subscribed
2 that states that you signed it on or about June
3 29th, 2017. Do you have reason to disagree with
4 that?
5 A. No.
6 Q. Do you know who the -- I can't read that name right
7 there. Do you know that name that's signed on that
8 block right there?
9 A. I do not.
10 Q. A Ms. Ashworth, maybe. Do you know anyone with the
11 last name Ashworth?
12 A. Not to my knowledge. Is that Mirror?
13 Q. I'm not sure. I don't want to guess. It looks
14 like it could be a -- I see, well, it looks like it
15 could be two dots, maybe two "i" dots on the first
16 name so I'm really not sure. That's okay.
17 A. I mean, the information's accurate.
18 Q. Okay. Now, well, that's good. And I'm more
19 concerned about the information itself but -- so
20 you describe a review of employment records in the
21 third paragraph there, do you see that? It says "I
22 reviewed our employment records."
23 A. "No personal knowledge of the employees at Wild
24 Wing Café in Columbia, South Carolina." Yes.
25 Q. So you don't have personal knowledge of the Wild

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1 people clocked in and when they clocked out.
2 Q. And that's in NCR Aloha; is that right?
3 A. Yes, sir.
4 Q. Did you look at any employment records to determine
5 who the employees of the Wild Wing Café were?
6 A. I did not. I don't believe so.
7 Q. Did you look at any employment records from any
8 date other than June 5, 2015?
9 A. I don't believe so.
10 Q. So how did you confirm then that what's in
11 paragraph is true? That Wild Wing Café has never
12 employed Brent Weston or Aaron Miller in any
13 capacity?
14 A. I just typed in their name in Aloha to see if it
15 would pop up as a terminated employee or a current
16 employee and it didn't show any information.
17 Q. So you have the ability just to type in a name in
18 Aloha and see if something generates?
19 A. Correct.
20 Q. And that searches across all fifteen corporate
21 stores?
22 A. No, it just goes through the current Vista
23 location.
24 Q. How far back does it go, that Aloha data?
25 A. Good ways. I haven't pushed it. I know it goes

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1 Wing employees that were there in June of 2015, do
2 you?
3 A. I mean, I pulled their report and saw who worked
4 that day.
5 Q. Let's talk about that. When you say -- so, and
6 again we could debate over what the word personal
7 knowledge means without looking at a report, you
8 don't know who was working in that location on June
9 2015 --
10 A. I do not.
11 Q. -- right? Because you weren't there on June 2015,
12 right?
13 A. Correct.
14 Q. You weren't like a guest in the restaurant on June
15 5th, 2015, were you?
16 A. I was not. Even if I was I wouldn't know who all
17 was working there.
18 Q. I would be amazed if you did. I would be quite
19 impressed. So you looked at some reports to
20 determine who was working on June 5th, 2015; is
21 that right?
22 A. Correct.
23 Q. So tell me about what employment records you looked
24 at.
25 A. I just looked at the labor report that shows when

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1 back before 2015.
2 Q. But you would agree with me that you can't actually
3 say that based on that search Wild Wing Café has
4 never employed Brent Weston or Aaron Miller, right?
5 MR. YARBOROUGH: Object to the form.
6 A. Rephrase the question.
7 Q. Sure. So Number 4 -- can you read Number 4 for us?
8 A. "Wild Wing Café does not know nor has it ever
9 employed Brent Weston or Aaron Miller in any
10 capacity."
11 Q. You said "does not know," I think you meant does
12 not now, right?
13 A. Correct. I will say, does not now. I mean,
14 there's -- there's no way for me to know if they
15 worked at a franchise location.
16 Q. Right. Well, there's no way for you to know if
17 Wild Wing Café employed them prior to the NCR Aloha
18 system going into place, for example, correct?
19 A. I mean, you could say that. Yeah.
20 Q. And then in 5, it says, "Wild Wing Café does not
21 now nor has it ever had any type of formal or
22 informal relationship with Brent Weston or Aaron
23 Miller other than that of invitor/invitee." Did I
24 read that right?
25 A. That sounds right.

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1 Q. The same issue there. You don't really have a way
2 of confirming what relationship Wild Wing Café ever
3 has had with Brent Weston or Aaron Miller, do you?
4 A. Ask it again.
5 Q. You don't have a way to confirm one way or another
6 what type of relationship Wild Wing Café has ever
7 had with Brent Weston or Aaron Miller, do you?
8 A. I mean, I personally don't know them so I guess
9 not.
10 Q. I'm hung up on this, sort of, the term "informal
11 relationship". What does that mean?
12 A. Your guess is as good as mine. "Wild Wing Café
13 does not now nor has it ever had any type of formal
14 or informal relationship." I mean, I guess that
15 would mean -- refer to them being regulars or
16 employees or friends of employees that would be
17 there on a regular basis. Pretty much stating that
18 they were random visitors at the time and/or a
19 random band.
20 Q. And/or a random band?
21 A. I mean, we have lots of musicians to come through
22 there so I don't know if these are -- I don't know
23 which one of these are -- if they're a customer or
24 if they're a band, but they don't have any -- any
25 real relationship with Wild Wing to my knowledge if

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1 Q. How did you rule out the existence of those types
2 of formal relationships back in June of 2015
3 between Brent Weston and Wild Wing or Aaron Miller
4 and Wild Wing?
5 A. Because speaking with some of the employees that
6 worked that day, Santana Griffin being one of them,
7 that these weren't regular people. These weren't
8 people that they knew. I say "regular people",
9 obviously they're regular people, but I mean, like,
10 regulars. They weren't there on a day to day or
11 week to week basis.
12 Q. That makes sense. You recall having a conversation
13 with Santana Griffin about that. Who else did you
14 have that conversation with before signing this
15 affidavit?
16 A. Marty Cox.
17 Q. Who's Marty Cox?
18 A. He was one of the doormen that night. He was also
19 one of my salary managers when I got there in 2000
20 -- in February of 2017.
21 Q. Anybody else?
22 A. Not to my knowledge.
23 Q. Tell me about that conversation with Santana
24 Griffin. What all did you all talk about?
25 A. Just, kind of, what happened that night since I

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1 you understand.
2 Q. I don't know that I do and that's sort of what I'm
3 hung up on. I get -- I think I get what formal
4 means. I mean, I think we can probably sit here
5 and list formal relationships. We'd agree an
6 employment relationship is a formal relationship,
7 right?
8 A. Uh-huh.
9 Q. You'd agree that a -- if it works for the corporate
10 office or the corporate parent of Vista Wings, that
11 there's a formal relationship there, right?
12 A. Uh-huh.
13 Q. Is there something else you meant when you used the
14 word "formal" there besides those type of parent
15 companies --
16 A. Well, I mean, like, a formal relationship to me
17 would be, you know, a regular that comes in there
18 four days a week that everyone know his name. Or a
19 roommate of an employee who comes in there three or
20 four times a week to eat lunch and that necessarily
21 doesn't work there but all the managers and all the
22 employees know who they are.
23 Q. So you would put that in the bucket of a formal
24 relationship?
25 A. Yes, sir.

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1 wasn't there.
2 --Q-- What did she tell you?
3 A. Told me that a gentleman was hitting on another
4 gentleman's wife and the husband asked the guy to
5 stop. The pursuer of the gentleman's wife, I
6 guess, said some unruly phrases and continued to
7 talk to the man's wife and the man took offense and
8 started an altercation shortly after that. Within
9 a minute, less than a minute, the altercation was
10 -- was broken up and the gentlemen were escorted
11 outside.
12 Q. Did she tell you anything else during this
13 conversation?
14 A. I mean, not that I recall. Maybe if something
15 comes back to me I'll let you know.
16 Q. Yeah, please do. Did she tell you that she
17 personally overheard the gentleman hitting on the
18 other gentleman's wife?
19 A. I believe she told me that the server that was
20 taking care of them told her that after what
21 happened.
22 Q. Who was that server?
23 A. I think it -- I believe it was Cera Falls.
24 Q. So Cera Falls told Santana Griffin that a gentleman
25 was hitting on another gentleman's wife and that

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1 led ultimately to an altercation?

2 A. Correct.

3 Q. Do you know of any documentation where Cera Falls

4 put that in writing for Santana Griffin.

5 A. I do not know.

6 Q. Did you ask, hey, Santana, did you get a written

7 statement from Cera about that?

8 A. I did not. We were just having manager

9 conversations after the first time that Will

10 reached out to me because obviously I wasn't there

11 so I was trying to find out as much as I could.

12 Q. Did Santana Griffin tell you about anything else

13 she did to investigate the incident?

14 A. I don't believe so. I don't believe we talked

15 about that.

16 Q. And then you mentioned Marty Cox. What did Marty

17 Cox have to say?

18 A. He just reiterated what she said was that as soon

19 as it happened that they came in and escorted the

20 guys out.

21 Q. When you say "they" who do you mean "they"?

22 A. The doormen. And I believe a bartender.

23 Q. Does Marty Cox still work with Wild Wing?

24 A. He does. He's a salary manager at Sandhills.

25 Q. Who else did you tell me was out at the Sandhills

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1 throughout the restaurant.

2 Q. Help me understand that. What does that mean?

3 A. Well, we've got three doors in the restaurant so

4 typically two of them stay at the front and one's

5 on the side door and one's on the back door based

6 off of volume, what you -- however many you need at

7 the time. And then whenever time permits itself

8 they'll walk around the restaurant in turn --

9 taking turns.

10 Q. Why do they walk around the restaurant?

11 A. Just to oversee the guests and if there is any

12 altercations try to stop them before they become

13 something.

14 Q. Do they only do that at night? I've never seen

15 that happen during the daytime.

16 A. Typically.

17 Q. When you say "typically" what do you mean?

18 A. I mean, it's just based off of what's going on. I

19 mean, a regular day, no, they don't have them

20 during daytimes. We actually currently haven't had

21 doormen in the Vista since I've been there since

22 February. We haven't had any need for them.

23 Q. So since February of 2017 there's been no doormen?

24 A. We did have one on Saint Patty's Day of last year

25 and we had -- or we had two on Saint Patty's day of

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1 location right now?

2 A. Craig Hefner.

3 Q. Craig Hefner.

4 A. Former GM.

5 Q. Have you ever seen any written statement by Marty

6 Cox about what he did or saw that night?

7 A. Not that I recall.

8 Q. Did Marty Cox make any statements to you about what

9 started the fight?

10 A. He just said the same thing that Santana said.

11 Q. About someone hitting on someone else's wife?

12 A. Correct.

13 Q. Did he talk about the nature of the injuries during

14 that fight?

15 A. The only thing he said was that it was over very

16 quickly. That they started, I guess, shoving and

17 having an altercation and by the time they got

18 there they had, I guess, thrown one -- one punch

19 and then they grabbed them, all the doormen, I

20 don't know if it was three or four of them, grabbed

21 them and then took them outside.

22 Q. He told you that all the doormen grabbed them?

23 A. Well, one -- one -- I guess, one -- typically one

24 doorman will still remain at the front just to help

25 monitor, but they're -- they're spread out

Page 88

1 last year and we had two on New Year's Eve this

2 year, but since February of 2017 we haven't had any

3 kind of incidents or altercations.

4 Q. So where did you get the information about the four

5 doormen, two at the front, one at the side and one

6 at the back?

7 A. I was just saying typically that's where they place

8 them. I wasn't there so I don't typically know.

9 Q. But that's what I'm saying. How do you know that?

10 A. From working there prior.

11 Q. During what time period.

12 A. 2008 when I was a server.

13 Q. So 2008 to 2011 that's where they placed them?

14 A. Uh-huh.

15 Q. Do you have any personal knowledge of where they

16 placed them in 2015, though?

17 A. I do not.

18 Q. Do you have any personal knowledge about what they

19 did during 2015, what the doormen did?

20 A. What do you mean what they did?

21 Q. Whether or not they -- so you described a practice

22 of doormen walking around the restaurant for

23 example, but if you haven't had any doormen there

24 except for two occasions in 2017 and you didn't

25 work in that location between 2011 and 2017, do you

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1 have any idea what the doormen's typical practices
2 were between 2011 and 2017?
3 A. I do not.
4 Q. You would agree with me there were not four doormen
5 working on June 5th, 2015, right?
6 A. I would not agree with you.
7 Q. You do not agree with that statement?
8 A. No, sir.
9 Q. It's your opinion there were four doormen working
10 that night?
11 A. There -- based off of the labor sheet there was
12 four doormen.
13 Q. Do you know their names?
14 A. Two of them I know. Danny Smith and Marty Cox. I
15 don't recall the other two.
16 Q. Have you gone back and looked at that sheet for
17 June 5th, 2015, the labor sheet?
18 A. I have.
19 Q. Did you provide that sheet to Andy Johnson?
20 A. I don't recall. Possibly.
21 Q. So I've served discovery in this case.
22 MR. BLAKE: I'm just going to show it to
23 him.
24 Q. This is a -- something that's called a discovery
25 verification that I'm showing you.

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1 And it's a sworn statement just like your
2 affidavit is here made under oath and it's signed
3 by Andy Johnson who I understand to be the chief
4 financial officer of Vista Wings, LLC and its
5 corporate parent we were discussing earlier; is
6 that right?
7 A. Uh-huh.
8 Q. Do you recognize Andy Johnson's signature on the
9 second page?
10 A. I don't know his signature.
11 Q. Well, I'll just represent to you that this has been
12 held out by Wild Wing's attorneys to be a sworn
13 statement by Andy Johnson and he has verified that
14 the following information that he's provided in
15 discovery is true. And he said that under oath.
16 Okay?
17 And when Andy Johnson verified discovery
18 answers in this case, let's find the record itself
19 here. So I asked who was working that night on
20 June 5th, 2015 and the door staff that was
21 identified was Marsden Cox --
22 A. That's Marty.
23 Q. -- Taylor Hedgepath and Nicholas Packet.
24 A. Uh-huh.
25 Q. There's not a fourth person.

Page 91

1 A. Well, there must have been a mistake. I mean,
2 there was definitely four people clocked in that
3 day.
4 Q. What report would you pull to figure that out?
5 A. Clock In and Out Report for Labor. Now, to my
6 knowledge, I did not look at what time they were
7 clocked in. So there is a chance that the three
8 were working that night while the one was working
9 during the day, but that would show on that report
10 as well.
11 Q. When did you last look at that report?
12 A. Last week.
13 Q. What occasion do you have to look at it last week?
14 A. Because I've never been to a deposition and I was
15 thinking about what you would talk to me about.
16 Q. You have good foresight. What else did you look
17 at?
18 A. I mean, I looked at that. I looked at the week
19 before sales just to see how they compared to that
20 night. See if there was any drastic difference or
21 if there's any staffing differently.
22 Q. How was it?
23 A. They had an extra doorman on compared to the week
24 before. And then I think they only did like \$2,500
25 more in sales.

Page 92

1 Q. But you don't know what time they had that doorman
2 on?
3 A. I mean, I don't recall that. I could look at it
4 though when I get back to work, if you'd like.
5 Q. So you're saying the week before they had three
6 doormen and the week of they had four doormen?
7 A. Correct.
8 Q. You just don't know what time either the week
9 before or the week of those doormen were working?
10 A. I don't -- I don't recall looking at that. I will
11 say though when I looked at the report I saw three
12 doormen originally and then I looked over it again
13 and saw the fourth one. It's kind of at the bottom
14 of the page.
15 So it's tricky how it -- how it's laid out.
16 That could be how they missed the fourth one.
17 THE WITNESS: I think we're going to have
18 to take a break right now guys.
19 MR. BLAKE: Absolutely.
20 THE WITNESS: I'm getting calls from work
21 and it's nine minutes before it opens.
22 MR. BLAKE: Let's take a break.
23 (Off the record.).
24 (By Mr. Blake)
25 Q. So when we went off, I can't remember exactly what

Page 93

1 we were talking about. I know we had covered the
2 doorman issue. And I was trying -- I think I was
3 just trying to flush out other conversations or
4 things that you had done sort of to prepare for
5 your testimony.

6 If I wasn't doing that, that's what I probably
7 need to be doing. So I know that you've talked to
8 Santana Griffin, you've talked to Marty Cox and I
9 know that you've looked at --

10 A. Sales reports.

11 Q. -- from the previous week. Were there other
12 reports that you looked at to prepare for your
13 deposition?

14 A. No, not to my knowledge.

15 Q. Besides Santana and Marty, and again, let's be
16 clear, if you've talked to the lawyers here at
17 Sweeny, Wingate & Barrow I don't want to know about
18 it, don't want to know anything about that. But
19 aside from the lawyers here at Sweeny, Wingate &
20 Barrow, have you had conversations with anyone
21 who's not a lawyer about anything about this
22 lawsuit?

23 A. Not to my knowledge.

24 Q. So you haven't interviewed any of the servers or
25 bartenders that were working --

Page 95

1 them towards the front.

2 Q. Have you read any of the depositions in this case?

3 A. I have not.

4 Q. What training has Bradley Johnson, at least to your
5 knowledge, had on the proper way to escort a body
6 from the inside of the restaurant to the outside of
7 the restaurant?

8 A. I mean, he -- I know that he's worked as a doorman
9 in the past and it's all the same, I mean, every --
10 every time. I've worked the door before and the
11 general manager told me at the time was that just
12 don't -- don't punch or don't hit just escort them
13 out. You're not there to fight, you're there to
14 subdue the situation and put a stop to it.

15 Q. But you don't know if Bradley was told that?

16 A. I do not.

17 Q. Do you know about Marsden Cox or any of the other
18 doormen working that night, what training they have
19 ever had on the proper way to escort a body from
20 the inside of the restaurant to the outside of it?

21 A. I have no knowledge.

22 Q. Do you know whether or not Mr. Finan was capable of
23 walking out of the restaurant?

24 A. Mr. Finan?

25 Q. Mr. Finan, the Plaintiff in this case, do you know

Page 94

1 A. No, I have not.

2 Q. You haven't talked to Bradley Johnson?

3 A. I mean, I talk to him, but not -- not in regards to
4 the case.

5 Q. Have you talked about anything about what happened
6 that night with Bradley Johnson?

7 A. The only thing he told me was that he -- someone
8 said that there was a fight, I think he was
9 bartending upstairs, or someone said there was an
10 altercation and he looked over the rail, saw two
11 guys looking like they were going to start
12 something so he runs downstairs and helps the
13 doormen escort them out.

14 Q. Did he tell you how many people they escorted out?

15 A. I believe two.

16 Q. Did he tell you that or is that just what you
17 believe happened?

18 A. That's just what I believe happened. I mean, he
19 escorted one out. In the conversation he said he
20 escorted one out and the door guys escorted the
21 other out.

22 Q. How did they escort them out? Did he talk about
23 that with you?

24 A. No, not really. Typically in the past they just
25 use, kind of, their bodies as a barricade to motion

Page 96

1 whenever he left the restaurant whether he was
2 capable of walking?

3 A. I wasn't there so I don't know.

4 Q. No one's talked to you about whether or not he was
5 capable of walking?

6 A. No.

7 Q. Any other things that you recall about information
8 that you've read or seen or people you've talked to
9 about the incident that occurred on June 5th, 2015?
10 Anything else at all?

11 A. Not to my knowledge.

12 Q. If you think of anything while we're working
13 through materials, please, certainly correct it and
14 let me know. And again I'm not trying to trick
15 you, what I don't want is surprise if we go to
16 trial. I don't want you to have an epiphany at
17 trial, oh yeah, I also heard that or I knew that or
18 I did that.

19 Would you know who Mr. Finan was to look at
20 him?

21 A. No.

22 Q. Would you know who his wife or he and his family,
23 would you know what they look like?

24 A. Not to my knowledge.

25 Q. You've never seen any pictures of them, for

Page 97

1 example?

2 A. No.

3 Q. So you've never seen any pictures of Mr. Finan's

4 injuries?

5 A. I have not. If they show up in court and all of a

6 sudden I went to high school with one of his

7 relatives I --

8 Q. I won't hold you to that. I'm not --

9 A. Hey, I know you.

10 Q. -- I'm not trying to trick you, I promise. Just

11 don't like surprises. So I don't have an employee

12 file for you. I have it for some folks and I have

13 one, for example, for Bradley Johnson. I'm going

14 to show you what I have.

15 MR. BLAKE: Mark this as Number 2.

16 (PLAINTIFF'S EXHIBIT 2 MARKED FOR

17 IDENTIFICATION PURPOSES (2 pages) - PERSONNEL

18 FILE FOR BRADLEY JOHNSON.)

19 Q. So I think I know what this is, but I'd like, if

20 you can, to identify this for the record for me to

21 the extent you're able what this is a printout of.

22 A. Looks like a printout from People Matter of

23 Bradley's file or current file.

24 Q. So when you say People Matter, is that the name of

25 the website that you log into?

Page 99

1 Q. Look at Bradley's with me if you can just so I can

2 make sure I understand some things. So it says

3 "Hire date 10/9/2015 bartender." Is that right?

4 A. That's -- that -- I believe that's the date that he

5 became a bartender.

6 Q. So when we were talking earlier we were talking

7 about him being a bartender at the upstairs bar on

8 June 5th, 2015. Was that his title on June 5th,

9 2015?

10 A. That was. I believe that, that was 2015, I think

11 that was before we had People Matter as our hiring

12 website and everything was paper before that I

13 believe.

14 Q. Flip to the second page with me. I'm trying to

15 figure this out. So there's earlier dates here on

16 Bradley's employment system and I'm just trying to

17 figure this out. So what I see on, and you see

18 those little Bates numbers on the bottom, those are

19 something that I believe your lawyers placed on

20 this to help us all be able to talk about it by

21 page number because not everything has a page

22 number. So you see WWC000287 on the bottom?

23 A. Yes, sir.

24 Q. That's the page I'm on and I see Wild Wing Cafe-

25 Pope Avenue. Do you know where that Pope Avenue

Page 98

1 A. Yes, for hiring --

2 Q. And it says --

3 A. -- where all personnel records are kept.

4 Q. Well, it's not where all personnel records are kept

5 because you said there's duplicative records in NCR

6 in the Aloha system, right?

7 A. Well, the Aloha system mirrors this system. The

8 only thing that I think the Aloha does differently

9 is that it incorporates into their payroll. I

10 mean, their positions are the same, their wages

11 should be the same, their hire dates should be the

12 same.

13 Q. But you're not suggesting that the NCR Aloha system

14 has the same tabs, for example, that the Workspaces

15 --

16 A. No, it does not.

17 Q. And it doesn't have all the same fields, for

18 example, that NCR Aloha system doesn't have an

19 email field for Bradley Johnson, does it?

20 A. No, it does not.

21 Q. So they're not identical systems, are they?

22 A. No, they are not.

23 Q. You're just saying that there should be consistency

24 across position and wages between the two?

25 A. Correct.

Page 100

1 location is?

2 A. Where -- where are you looking at?

3 Q. In the middle of the page on WWC00287. Almost dead

4 center in all capital letters.

5 A. Where does it say Pope Avenue? Big letters. My

6 bad.

7 Q. That's okay.

8 A. Okay. Yeah. Pope Avenue. I don't recall the

9 address. If I had to guess based off of what I

10 know about Bradley where he was a restaurant

11 manager, I'm thinking that was Hilton Head.

12 Q. Fair enough. Do you know if that's a franchise

13 store?

14 A. Corporate. It's corporate.

15 Q. It's a corporate store. And so based on what you

16 know about Bradley, do you know that he used to be

17 a restaurant manager at another location?

18 A. He was. He was a salary manager at the Hilton Head

19 location.

20 Q. And there's no information there about his salary

21 data; is that correct?

22 A. Yeah. Because this is put in, I guess, as an

23 hourly wage and when he was doing that he had

24 salary.

25 Q. Well, it says "slash year" on there. Do you see

Page 101

1 that? See the hire and then there's a 0.00 slash
2 year?
3 A. Uh-huh.
4 Q. So you still think that is an hourly wage
5 indicator?
6 A. No. No, I mean, I know that he was on salary when
7 he was down at Hilton Head.
8 Q. And does the slash yr after the hire information
9 confirm for you that, that's a salary position?
10 A. I mean, I don't -- I don't really know.
11 Q. Fair enough. Well, do you know if that hire date
12 is correct? That May 6th, 2013?
13 A. I don't know that either.
14 Q. So let's go up to the next one. Wild Wing Café
15 Lady Street. That's the one that I'm calling the,
16 sort of, the premises where this incident broke out
17 on June 5th, 2015. Do you agree that, that's the
18 only Wild Wing Café on Lady Street?
19 A. That is.
20 Q. So it says there that he was a bar manager on
21 February 1st, 2014; is that correct?
22 A. I mean, I don't -- I don't know about the date but
23 he did go from Hilton Head to -- back to the Vista
24 location as a bar manager. He demoted himself.
25 Q. He demoted himself. You anticipated my next

Page 103

1 a salary manager as the bar manager, but it's not
2 uncommon to have a bar manager that's actually a
3 bartender.
4 Q. So when we were earlier talking about --
5 A. Salary managers.
6 Q. -- salary managers, not every location follows that
7 model; is that correct?
8 A. Correct.
9 Q. So we should not have, and that's a good
10 clarification to make, I should not assume from
11 your testimony about those three manager positions
12 that there was necessarily those three manager
13 positions in place at Vista Wings on June 5th,
14 2015.
15 A. I don't have knowledge.
16 Q. You don't have knowledge one way or the other.
17 A. Right.
18 Q. Okay. How would I be able to figure out or how
19 would you figure out if you were looking backwards
20 to June 5th, 2015, what manager positions there
21 were at that time?
22 A. You would have to speak to whoever was in charge at
23 that time whether it be Craig Hefner or one of the
24 managers that was currently managing at the time.
25 Q. I got you. And we can do that, that's -- do you

Page 102

1 question. How do you know that he demoted himself?
2 A. He told me.
3 Q. Did he tell you why he demoted himself?
4 A. He just wasn't -- he was young and wasn't ready to
5 be a manager and he wanted to go back to
6 bartending.
7 Q. So what, if anything, do you understand about the
8 job responsibilities of a bar manager in the 2014,
9 2015 time period?
10 A. What are my understandings of a bar manager, like,
11 their responsibilities?
12 Q. Yeah.
13 A. Well, they're in charge of the bar, they're in
14 charge of the costs, they do schedules, they do
15 orders. They're in charge of cleanliness of the
16 bar and the majority of the time they're the ones
17 who train new bartenders.
18 Q. So just, again, and we're going to depose Bradley,
19 I'm just trying to find out what you know or what
20 you have discussed with him. Do you know whether
21 he was bartender or a bar manager on June 5th,
22 2015?
23 A. I believe at the time he was both.
24 Q. Help me understand. What do you mean he was both?
25 A. Some stores have, myself personally I like to have

Page 104

1 know of a way through NCR Aloha or People Matter to
2 confirm-that?
3 A. It should have the dates in there.
4 Q. Do you know in People Matter can you search for a
5 list of all employees by date?
6 A. Not to my knowledge. I don't -- I don't -- I've
7 never tried to search it.
8 Q. How do you access someone's employment file in
9 People Matter?
10 A. You would go to -- myself I would log in and I
11 would go to the administrator because I'm an
12 administrative user on there, I would click on
13 employees and it would bring up a list in
14 alphabetical order of all the employees we've had
15 at the Vista location since People Matter was in
16 place, inactive or active.
17 Q. Do you know when it went active?
18 A. I don't recall.
19 Q. You don't even recall which year it went active?
20 A. After I was at Columbia -- that's after I became
21 general manager of the Columbiana location. So
22 after 2012.
23 Q. I got you. Okay. And we can drill down further to
24 figure that out. So as administrator you can see
25 the employment files for current employees and

Page 105

1 former employees, right?

2 A. Correct.

3 Q. Let's talk about the tabs on WWC000286. See how it

4 says up at the top -- I'm looking here at -- well,

5 let's start with the top, top. At the top, top it

6 says "Settings, English, Log out". So that

7 indicated that whoever printed this was logged in,

8 right?

9 A. Correct.

10 Q. Did you print this page do you know?

11 A. I did not.

12 Q. Do you know who did print this out?

13 A. I do not.

14 Q. But again, I can't just go to this website, I have

15 to have log in access to get this information,

16 correct?

17 A. Correct.

18 Q. And that's password assigned essentially?

19 A. Username and password.

20 Q. Does anyone below you have the same level of

21 administrative access at the Vista Wings location?

22 A. All the managers have access to it.

23 Q. Hourly and salary?

24 A. Just salary.

25 Q. Just salary. Okay. And then the next tab I see it

Page 107

1 A. To hire them? No.

2 Q. -- to hire them. No. Then that's not something

3 you click on to figure out what open positions are

4 out there for example --

5 A. No.

6 Q. -- right? Do you all have a list of open vacant

7 positions within People Matter?

8 A. No.

9 Q. How do you know if, let's say you lost two servers

10 this week, how would you communicate to your other

11 managers, hey, we need to get two new servers in

12 here?

13 A. I would tell them.

14 Q. You would just tell them. Okay. There's no other

15 formal way of document it within the system?

16 A. Uh-uh.

17 Q. The learn tab, do you use that learn tab for

18 anything?

19 A. I don't. I know that sometimes the home office, if

20 they have some kind of training material they want

21 us to review or want an employee to go over they'll

22 put something in the learn tab and then it will go

23 up to the top left where it says "Notification" and

24 each employee can log into their own file and click

25 on either notification or learn and review that

Page 106

1 says, like, "Home, hire, learns, schedule".

2 A. Uh-huh.

3 Q. I've got a question about the schedule. Do you

4 maintain schedules for employees within Workspaces

5 as well?

6 A. We do not. It's one of those situations where

7 there's a little bit of redundancy.

8 Q. I got you. And that's just not a functionality --

9 A. That's just -- that's just offered with People

10 Matter whenever we got it but it's not one of the

11 tools that we've decided to use.

12 Q. I want to make sure, so, and I'm calling it

13 Workspaces just because that's, that tab in the

14 upper left-hand corner, but you call it People

15 Matter, right? And that's because that's the

16 software --

17 A. Correct.

18 Q. -- I mean, sorry, the website that you're logging

19 into?

20 A. Uh-huh.

21 Q. When it says "Hire", do you use that hire tab?

22 A. I'm pretty sure if you click on that hire tab it

23 will just pull up their hire date.

24 Q. I understand. That's not something that you would

25 click on --

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1 document.

2 Q. Now how would an employee know that there's been

3 training material uploaded and they need to click

4 into their --

5 A. They would receive an email to the email that's on

6 their account.

7 Q. I got you. So People Matter automatically

8 generates an email saying, hey you guys, there's a

9 notification in your system, you need to log in?

10 A. Yes.

11 Q. Have you ever gotten emails from People Matter like

12 that personally?

13 A. I have.

14 Q. And have you ever gotten training materials sent to

15 you through that learn tab?

16 A. I have but I don't recall what they were about. A

17 lot of times, it's just generic training. Just to

18 reiterate some stuff whether it be ServSafe or Food

19 ServSafe.

20 Q. Does the home office put its own type of training

21 materials in that tab?

22 A. They have.

23 Q. So the next, sort of, layers of tab, it says "Home

24 page, manage team members." And then it says

25 "Bradley Johnson". That might not be tabs at all.

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1 Do you know --

2 A. That's -- that's -- that's levels that you -- so

3 you would click on home page, you would click on

4 manage team member and then you would click on Brad

5 and it just --

6 Q. It would change what the screen shot shows you?

7 A. Yeah. It just shows you what pages you went

8 through to get to where you're at. So like if I

9 was -- if this was a computer screen and I hit

10 back, Bradley Johnson would go away and it would

11 just say --

12 Q. Manage team members.

13 A. Right.

14 Q. I'm following you now. On that manage team members

15 page, is that where you would see the list of all

16 the employees?

17 A. That would be my home page where it would show

18 applications, hires, candidates that we're

19 considering for employment. And then you would

20 click on one of those tabs and then it would say

21 off to the side, home page, manage team member.

22 Let's say I click on applicant, instead of Bradley

23 Johnson it would say applicants and I would be on

24 the page to search for potential new team members.

25 Q. I got you. So the applicants who are seeking a

Page 111

1 A. I know it repeats the question sometime in

2 different formats to see if you're lying.

3 Q. Control for exaggeration, that sort of stuff,

4 that's --

5 A. Don't hit "c" for every answer.

6 Q. Did you ever take one for fun just to see what your

7 results were?

8 A. I have not, not for Wild Wing. I have taken one a

9 long time ago just for, I was about to cuss, just

10 for giggles.

11 Q. Yeah, now, I'm with you. So the next tabs down --

12 A. The work info, onboard?

13 Q. Yeah. Yeah.

14 A. Work info is just their basic information. Their

15 address, phone numbers, Social Security, basically

16 the information you'd have on your application.

17 Onboard is where they fill out their W-4 and

18 their I-9. I've personally never used assignments.

19 Notes are for me to put any kind of notes on their

20 files that I want to put. BG checks. Never used

21 that before.

22 Documents is where we go to -- where they

23 would scan their ServSafe certification if the home

24 office was doing that or did do that. That would

25 also be where I would scan any kind of writeups or

Page 110

1 job, who uploads their applications into this

2 software?

3 A. They go to WildWingCafe.com, scroll to the bottom

4 of the page, click on employment, and it

5 automatically directs them to the People Matter

6 application and a personality exam.

7 Q. I got you. A personality exam? They have to take

8 a personality exam?

9 A. Yes, sir.

10 Q. Did you have to take one?

11 A. I did not just because when I got hired we didn't

12 have the software and we still had paper

13 applications.

14 Q. That's good. I don't know if I ever would have got

15 a job if I had to take a personality exam. I'm

16 glad I missed that process.

17 A. It's very helpful. I mean, it flags people green,

18 yellow or red, if they think that, based off of

19 their exam, that they would be able to work with

20 people, with the public.

21 Q. Is it like using a Myers-Briggs format? Do you

22 know what type of personality testing it's giving

23 them or you don't know?

24 A. I don't know.

25 Q. Interesting.

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1 disciplinary notes or pretty much any kind of

2 document that I want to put on Bradley's file.

3 Learning and schedules. Learning is just the

4 repeat of learn up above and schedules we don't

5 use.

6 Q. Got you. Okay. That's very helpful. So you said

7 assignments, I think you mean assessments --

8 A. Sorry. Yeah, assessments.

9 Q. So you've never used that assessments tool, right?

10 A. I need glasses.

11 Q. That's okay. That's why I'm wearing mine.

12 A. I'm not.

13 Q. So instead, if you were to give Bradley a writeup,

14 for example, that would fall underneath the docs

15 tab?

16 A. Correct.

17 Q. Tell me about the writeup process. I mean, do you

18 guys have a standard HR form that you use to write

19 somebody up?

20 A. We do.

21 Q. Do you require them to countersign to acknowledge

22 their receipt of it?

23 A. We do.

24 Q. Do you send those on to the corporate office?

25 A. We scan them into People Matter and then we email

Page 113

1 them to our HR.

2 Q. And so let's say you needed to make a termination

3 decision. Do you have to engage corporate HR in

4 that process?

5 A. Depends on the type of termination.

6 Q. Give me some examples --

7 A. If I catch someone stealing fifty pounds of chicken

8 wings out the back door I don't need permission to

9 let them go.

10 Q. Right. And so give me actual examples of, I don't

11 want to know the names of the person, I just want

12 to know, give me actual examples of when you've had

13 to terminate someone and you didn't have to use HR

14 and an example of when you had to terminate someone

15 but you did have to use HR.

16 A. Well, obviously you catch someone stealing you

17 don't have to use HR. Someone, no call, no shows,

18 you don't have to use HR. I had recently had to

19 terminate an employee for a small theft but his

20 position required HR's input.

21 Q. So what was his position?

22 A. He was an hourly manager.

23 Q. I got you. Interesting. So sometimes the position

24 can require HR involvement. I guess, if it's a

25 manager do you always have that HR involvement to

Page 115

1 they've say, hey, Brian is GM he wants you to

2 follow this general process for reprimand

3 discipline termination?

4 A. I've received emails from my HR, Tracy White, and

5 proper disciplinary actions.

6 Q. What about her predecessor?

7 A. I received it from multiple HRs. They're typically

8 about the same.

9 Q. I got you.

10 A. Just different forms of employee consulting forms,

11 different formats.

12 Q. Is that what they call them, employee consulting

13 forms? Not -- I've seen disciplinary reports; I've

14 seen corrective action plan.

15 A. They've -- they've been all of the above --

16 Q. I got you.

17 A. -- since I've been there. I've been through five

18 CEOs so --

19 Q. You've had a lot of turnover.

20 A. Stuff changes.

21 Q. Yeah.

22 A. People come in with new ideas.

23 Q. I'm not going to ask you if you like the current

24 system better than the old one. I'll spare you

25 from answering that under oath.

Page 114

1 terminate?

2 A. Oh yeah, HR and the regional manager.

3 Q. I got you. True even if it was an hourly manager?

4 Same thing?

5 A. Like I said, it just depends on the situation. I

6 mean, if he had stole -- he took \$20.00. If he had

7 stole five hundred, no brainer.

8 Q. Sure. Sure. So if it's a close call, let's say it

9 was just a server, if it's a close call, do you

10 involve HR? Is that sort of your litmus test?

11 A. Close call? What do you mean?

12 Q. Yeah, it's a bad question. So you're saying

13 sometimes it's a no brainer because of the extreme

14 nature of the offense, right?

15 A. Uh-huh.

16 Q. They've stole about a \$500, it's a bunch of no call

17 no shows. If it's a close call, like, let's say

18 it's their first time with a no call, no show, but

19 you guys hate this employee and you want him gone

20 anyway, do you have to involve HR in that process?

21 A. We do not. I mean, that's kind of up to the

22 managers discretion. We'll typically write them up

23 with their first written warning. After three

24 written warnings they're eligible to be terminated.

25 Q. Do you have a formal, like, HR document where

Page 116

1 A. They both have their ups and downs.

2 Q. That's good. What about the BG checks. I

3 understand that to mean -- do you understand BG to

4 mean background?

5 A. I do now.

6 Q. Yeah. Do you guys use background checks for

7 employees?

8 A. We do not. We -- we base off of the -- the

9 personality exam.

10 Q. Are the results of the personality exam kept on any

11 of these tabs?

12 A. I've never actually had to research one after

13 hiring someone so I wouldn't know.

14 Q. How are you notified of the personality results?

15 Where would you look at that--

16 A. Whenever I go into manage team member -- or go to

17 the home page and go to applicants, it's got their

18 name, email and phone number on the left side of

19 the screen and on the right side of the screen

20 they're red, yellow or blue.

21 And then you can click on the color and it

22 will show what position they applied for.

23 Sometimes they'll have a green, sorry I said blue,

24 green -- green, yellow and red.

25 Sometimes they'll have a green and a yellow

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1 and you click on the yellow and it will say, all
 2 right, well, for the yellow they applied for
 3 kitchen, we don't think they're going to be a good
 4 kitchen guy.
 5 Green, you click on that, it will say
 6 bartender/server, maybe this person's strong point
 7 is --
 8 Q. Bartender/server.
 9 A. Bartender/server.
 10 Q. Well, now, typically because they have to interact
 11 with the public more?
 12 A. Uh-huh.
 13 Q. Anything else besides the personality test that you
 14 use to decide, hey, I'm going to hire this person
 15 as a bartender?
 16 A. I mean, obviously experience.
 17 Q. And they put all that in their application?
 18 A. Correct.
 19 Q. So you look at the application, look at the
 20 personality test, anything else you do to decide
 21 whether or not to hire somebody?
 22 A. Call their previous employers.
 23 Q. And you get that off of their application as well?
 24 A. (Witness nods head.)
 25 Q. Do you always call the previous employers?

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1 A. I try to, at least, call the -- the most recent.
 2 Q. Do you ever talk to them about why the employee
 3 left?
 4 A. No. I just ask them a simple question. This is
 5 the person's names that we're considering hiring,
 6 would you hire them back? They say "yes" or "no".
 7 Q. I got you. You don't use the scheduling tabs. You
 8 said the learning tab was identical to the one up
 9 top, right?
 10 A. Correct.
 11 Q. Bradley doesn't have a home location. Do most
 12 people have home locations?
 13 A. Most people do. Bradley's been with the company
 14 for a while and he's worked at multiple locations.
 15 Q. Do bartenders not have any minimum wage given to
 16 them or any -- I mean, any base pay at all? Is it
 17 all tip based?
 18 A. No, they get three dollars an hour.
 19 Q. So do you know why the data there says zero?
 20 A. I have no idea. I mean it's, like I said, payroll
 21 is mainly used through Aloha.
 22 Q. So to get, sort of, an accurate, complete picture,
 23 we need to look at his Aloha sheet as well to
 24 understand his actual employment record?
 25 A. Probably. And for his employment, you'd probably

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1 have to look at every location he's ever worked at.
 2 Q. Because he's been at Pope and he's been at Lady's
 3 Street and he's been at Bower Parkway. Is he at
 4 Bower Parkway now?
 5 A. I believe so. Yeah. He's not with me.
 6 Q. He's not with you. So do you have one of these for
 7 you though? In other words, do you have your own
 8 employee file like this?
 9 A. I don't -- I don't have access to my file. That's
 10 the home office that has access to my file.
 11 Q. So you've never yours? You don't know if it looks
 12 like this or not.
 13 A. I do not.
 14 Q. But the home office does maintain your employment
 15 file?
 16 A. Uh-huh.
 17 Q. What about your other managers right beneath you?
 18 Do they have home pages that look like this?
 19 A. That's all home office for the managers.
 20 Q. That's all home office. Okay.
 21 MR. BLAKE: We don't need to mark this.
 22 Q. This is just, I'm just going to show you this,
 23 because I've seen it in some of the employment
 24 files I have gotten so far from the People Matter
 25 website and it includes this team member drug and

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1 intoxicants policy. Do you know where I can get a
 2 copy of this policy?
 3 A. That would be in the employee manual.
 4 Q. That's in the employee manual itself?
 5 A. (Witness nods head.)
 6 Q. Okay. Is everyone required to sign one of these
 7 team member drug and intoxicant policy?
 8 A. Uh-huh. It's all signed online now though through
 9 People Matter.
 10 Q. You said, uh-huh. You mean yes, right?
 11 A. Yes, sir.
 12 Q. Okay.
 13 A. Sorry.
 14 Q. No worries. I just want to make sure it's clear.
 15 So when you say it's all signed online now, what do
 16 they have to do, do they have to click a box or
 17 something like that?
 18 A. Whenever they go through the hiring process through
 19 the onboarding, they fill it out there.
 20 Q. I understand.
 21 A. They would have to download the different sections
 22 whether it be the alcohol, the confidentiality form
 23 which is basically about recipes, don't give away
 24 our trade secrets. They would download it, read it
 25 and then at the end they would E-Verify.

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1 Q. I got you. So can you then pull up in their People
 2 Matter file the fact that they've completed that?
 3 Can you see the E-Verified documents?
 4 A. They wouldn't be able to be hired if it wasn't
 5 completed. It would just automatically kick them
 6 back to it every time you try to put them in the
 7 system.
 8 Q. When did that automatic system go in place?
 9 A. When we got People Matter.
 10 Q. So I have Cera here signing this on December 4th,
 11 2015 --
 12 A. Uh-huh.
 13 Q. -- even though, well, it looks like it was revised
 14 on November 6th, 2014. Do you know when People
 15 Matter went on board relative to this?
 16 A. I'm pretty sure it went on before that, but I also
 17 know that Sara Boyer is an eleven year employee so
 18 she was -- possibly the reason they had her sign
 19 this was because she was not hired through People
 20 Matter.
 21 Q. I understand. So maybe for older employees they
 22 had to go back and they had to sign paper
 23 acknowledgments?
 24 A. (No response.)
 25 Q. That would make sense. You need to answer.

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1 through it at meetings where?
 2 A. At the home office.
 3 Q. I got you. So is that where you received training
 4 on how to use NCR Aloha?
 5 A. Most of the training was during my manager
 6 training. I mean, I'd already had a good base
 7 knowledge of it working as a server as far as the
 8 front of the house computers go. But all the back
 9 of house I got taught while I was in manager
 10 training in 2011.
 11 Q. I know it's a common product. Have you used it in
 12 other server jobs before you came to Wild Wing?
 13 A. Aloha?
 14 Q. Yeah.
 15 A. I did not.
 16 Q. But it was in place prior to the Axum Capital
 17 Partners acquisition, correct?
 18 A. Correct.
 19 Q. In place, I mean, it was in use by the Wild Wing
 20 Café locations?
 21 A. Correct.
 22 MR. BLAKE: Let's go ahead and mark this
 23 one.
 24 (PLAINTIFF'S EXHIBIT 3 MARKED FOR
 25 IDENTIFICATION PURPOSES (9 pages) - 2013

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1 A. What was the question?
 2 Q. That it would make sense that for older employees
 3 they had to maybe -- maybe the reason why I have
 4 some for employees and not for others is that
 5 they're older employees essentially is what I was
 6 asking.
 7 A. I would believe so.
 8 Q. Have you ever seen the incident report from the
 9 City of Columbia police department regarding what
 10 happened on June 5th, 2015?
 11 A. Not to my knowledge.
 12 Q. Have you ever had any conversations with a police
 13 officer named Justin Poage, I think, is how you say
 14 it. It's P-o-a-g-e.
 15 A. Not to my knowledge.
 16 Q. Have you ever seen the what I imagine is a very
 17 thick manual for the NCR Aloha Table Service Point
 18 of Sale Report Guide?
 19 A. I've breezed through it. I don't have a copy of it
 20 currently. We've gone over it in meetings.
 21 Q. When you say I don't have it currently, I know you
 22 don't have it sitting here with you, do you have it
 23 in the restaurant somewhere?
 24 A. That's possible.
 25 Q. When you said, you breezed through it, you breezed

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1 MANUAL.)
 2 A. You're just basically talking about the actual
 3 system, correct?
 4 Q. The actual system. That's right. This is -- what
 5 I'm handing you is not at all purporting to be a
 6 complete version here. This is, sort of, just what
 7 I have found online. The copyright was 2013 on
 8 this manual. Do you know whether or not you've
 9 seen a more recent version of the manual than this?
 10 A. I have no idea.
 11 Q. Do you know if this is a version of the manual that
 12 you went through when you have physically perused
 13 it in the past?
 14 A. The front page looks familiar.
 15 Q. If you will, flip through here with me. There's a
 16 table of contents starting on the third page that
 17 talks about sort of the various functionalities of
 18 this NCR Aloha system.
 19 A. Uh-huh.
 20 Q. And the next one two, three, four pages including
 21 that one right there. It looks like it's a pretty
 22 detailed list of reports. Have you been trained on
 23 how to utilize all these reports?
 24 A. I was trained on the majority of them. Since I've
 25 been in salary management I've probably used a --

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1 actually used a quarter of them.

2 Q. So I was hoping that we could look at this table of

3 contents and you can tell me what reports you do

4 use, what reports you don't use.

5 A. Oh, wow.

6 Q. Just so I can -- I don't waste your time asking

7 questions about things that you don't do anything

8 with.

9 A. Okay. Page 1. I have used Clock In and Out

10 reports, Employee Front of the House Sales reports.

11 Q. Is that what the FOH stands for?

12 A. Yeah. Flash reports, Labor reports, Product Mix

13 reports, Restaurant Sales reports, Server Sales

14 reports, Sales report Summary and Weekly, Server

15 Sale Detail reports, Comparative Employee Sales

16 reports, Hourly Sales and Labor reports, Overtime

17 Warning reports, Overtime Forecast reports, Edited

18 Punches reports, Payments reports, Product Mix

19 reports, Void reports, Sales report Summary and

20 Weekly, Server Sales Detail reports.

21 Q. I think we may be in getting into repetitive. Hold

22 on one second.

23 A. Yeah, we definitely are.

24 Q. Because I know you've already said Server Sales

25 Detail reports.

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1 A. We've already said Hourly Sales and Labor reports.

2 Q. Yeah. I do see though, I guess, more detail here

3 in these BOH -- what does BOH stand for?

4 A. Back of house.

5 Q. I see there's -- I mean, obviously, you don't need

6 to repeat yourself. Do you see anything different

7 here that you also use, like --

8 A. No, that's all of it.

9 Q. That's all of it?

10 A. Reprint.

11 Q. You said reprint? Which page is that on?

12 A. 3-2.

13 Q. Oh, I see it. Okay. All right. So backing up

14 then, Clock In, Clock Out reports. What do you use

15 those reports for?

16 A. What it says. To check what time employees clock

17 in and clock out.

18 Q. Do you do that on the app or do you just do that on

19 the system?

20 A. You can do it on both.

21 Q. You can do it on both? But why, I mean, what

22 occasions you to have to use that report, I guess,

23 is what I'm asking?

24 A. Print it out at the end of the night to make sure

25 that all your employees have clocked out.

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1 Comparing during the week, comparing the shifts to

2 make sure the employees aren't clocking in too

3 early and if they are talk with their managers

4 about how to properly manage labor. Sometimes

5 people are sneaky.

6 Q. So they clock in before they're supposed to clock

7 essentially?

8 A. (Witness nods head.)

9 Q. I got you. How often do you print a Clock In,

10 Clock Out?

11 A. Myself personally?

12 Q. Yeah.

13 A. Every closing shift.

14 Q. Every closing shift.

15 A. If I don't print it I can go to the front of house

16 computer and just pull it up so it's definitely --

17 I review it every -- every shift.

18 Q. So there's a front of the house computer and a back

19 of the house computer?

20 A. Yeah, they're linked. There's all the front of --

21 all the terminals that the servers use in the front

22 you can pull up a lot of reports on there that just

23 show it on the screen as opposed to going to the

24 back and print it out.

25 Q. But if you wanted to print off something from the

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1 Aloha is there a -- do you have a physical printer

2 in the store to print it off?

3 A. Yes, sir. In the office.

4 Q. Do you have to be at a specific terminal to do it

5 or is it -- do you have to be at the back of the

6 back house --

7 A. You have to be -- you have to be at a back

8 computer.

9 Q. But if you're at the front of the house you can

10 look at the screen and see clock in, clock out

11 time, for example?

12 A. Correct.

13 Q. Employee Front of the House Sales reports, what do

14 you use that one for?

15 A. Well, we print off the sales reports at the end of

16 the night so that we can put it with our paperwork

17 to seal with our EDCs which is our credit card

18 reports. Wrap all the credit cards with it, put it

19 in a nice little bundle and stick it in a bank box

20 for -- if we need to refer to it in the past or in

21 the future.

22 Q. Where do you store all those bank boxes?

23 A. I've got some of them in a closet right next to my

24 office. After, I believe it's like after a year,

25 they go to the home office. Supposed to go to the

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1 home office after a year. I've got quite a few.
 2 Q. So you store them onsite for a year. But why do
 3 you put the Front of the House Sales reports with
 4 the credit card reports?
 5 A. Just for the -- it's just, kind of, like the daily
 6 summary. So you got the credit card reports, say
 7 on Monday, you've got the credit card reports for
 8 Monday, you've got all the credit card slips, you
 9 got the sales report. And then, I know in the
 10 past, we used to printout the Clock Out reports.
 11 Q. And stick it in their, too?
 12 A. Uh-huh.
 13 Q. What's a Flash report?
 14 A. It's just a quick report about where you're at for
 15 the day.
 16 Q. When you say where you're at for the day --
 17 A. Sales-wise. Comps-wise. Something that I used to
 18 use before I had the Pulse app.
 19 Q. I got you.
 20 A. You can also break it down to how many sales you're
 21 doing per hour as opposed to looking at a summary.
 22 Q. Why do you need that level of detail about the
 23 sales. Why does it matter?
 24 A. Because we're in a money making business. I want
 25 to know how much we're making.

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1 Q. So you're bringing the front of the house staff
 2 together, right?
 3 A. Uh-huh.
 4 Q. Is that a yes?
 5 A. Yes, sir.
 6 Q. Okay. Perfect. Who else besides front of the
 7 house staff like servers, are going to be there?
 8 Are the bartenders there?
 9 A. Typically.
 10 Q. Managers? Are any managers part of that ally
 11 rally?
 12 A. Yes, sir.
 13 Q. And so do you personally have to participate in
 14 those sometimes?
 15 A. It just depends on the shift and what's going on.
 16 Q. What would involve bringing in the general manager
 17 to an ally rally, like, what's important enough to
 18 require you to be a part of that?
 19 A. Well, if it's my shift, I'm want to know -- I want
 20 to make sure that they know that I'm there and what
 21 my expectations are and what are goals are for the
 22 day.
 23 Now, there are situations, if you've never
 24 worked in a restaurant before, but there are
 25 situations where I'm dealing with a vendor or a --

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1 Q. But I mean, even armed with that information, I
 2 mean, what can you do? I mean, I'm just trying to
 3 think practically. If it's two o'clock and the
 4 Flash report says, you know, the last two hours are
 5 down, is there anything you can to boost sales?
 6 A. Yeah, I mean, we can speak with our servers. In
 7 our ally rally we do a ally rally at night which is
 8 kind of like a pep talk before the shift. If
 9 there's any products we're wanting to push or like
 10 right now, we're doing the -- the little clovers
 11 for MDA so we definitely talk with our servers
 12 about that so that we can raise as much money as
 13 possible.
 14 But at the same time if you inform your
 15 employees of, hey, we're twenty dollars down, I
 16 need five of you guys to sell two more -- everyone
 17 sell one more Coca-Cola, you know, we'll be up. Or
 18 if we're fifty dollars down I need everyone to sell
 19 an appetizer more than what you would normally
 20 sell.
 21 Q. So I've seen that ally rally in an email that I was
 22 going to show you later. I was going to ask you
 23 what an ally rally is? So how would you describe
 24 what an ally rally is?
 25 A. I mean, it's just a hustle before the shift.

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1 something broken in the kitchen or something that
 2 needs my immediate attention that I'll just give
 3 notes to the closing manager and say, hey, after
 4 you -- the first thing we do in the ally rally is
 5 we go over the sections so everyone know where
 6 they're at just in case.
 7 Servers like to switch sections. Someone that
 8 was originally scheduled to close now wants to get
 9 out early because they have to study for a test or
 10 it's their roommate's birthday or whatever so we
 11 make sure everyone knows where they're at.
 12 We tell them if we're out of any product. We
 13 tell them if we've recently brought in new product
 14 that will be replacing a product and any extra
 15 incentives whether it be a limited time offer that
 16 we're -- we're trying to push or like I said the
 17 MDA -- MDA clovers.
 18 And then anything that I want to add I would
 19 write on the ally rally if I'm detained and give to
 20 the manager who's doing the ally rally to make sure
 21 they cover that.
 22 Q. What about if there's an upcoming event like a
 23 concert like the one on June 5th, 2015. Do you
 24 talk about that with staff during the ally rallies
 25 prior to the event?

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1 A. I mean, not -- not really because, I mean, I
2 wouldn't even consider that a concert. We have
3 music every weekend.
4 Q. Well, we can look at the email later. Any other
5 things that --
6 A. I mean, we'll definitely, like, the day of the
7 show, we'll tell the servers what the band's name
8 is, that way if any customer ask, hey, who's
9 playing tonight, you know, they don't -- they know
10 what the name of the band is.
11 Q. As a general manager are you ever responsible for
12 lining up a band?
13 A. No, sir.
14 Q. Who handles that?
15 A. The marketing department and Rob Lamble who does
16 our booking.
17 Q. What's Rob's last name?
18 A. Lamble. L-a-m-b-l-e. And then currently right now
19 we have an entertainment manager at the home office
20 named Jennifer, I should just leave my phone out,
21 Siebenaler, S-i-e-b-e-n-a-l-e-r.
22 Q. I'm sorry. One more time, I couldn't write it that
23 fast.
24 A. S-i-e-b-e-n-a-l-e-r.
25 Q. Do you know how long that entertainment manager

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1 be myself or another salary manager, we supply the
2 band with their check, whoever's name is on the
3 check that's who we give the check to. And then
4 they sign, we call it a band sheet, saying that
5 they received their check.
6 Q. Where do you get those band sheets?
7 A. It comes in the UPS package with the checks from
8 the home office.
9 Q. What do you do after they sign them? Do you send
10 them back to the home office?
11 A. I mean, we -- we put it back in the safe with the
12 rest of the band checks and then at the end of the
13 month we scan it and send it to the home office.
14 Q. It gets scanned in?
15 A. Uh-huh.
16 Q. Are they saved on that computer we talked about?
17 A. They're saved through the emails. I don't like to
18 junk up my computer. If it's on an email, I don't
19 need it.
20 Q. I with you.
21 A. Since I don't delete my emails.
22 Q. So I've attempted to discover that back and forth
23 exchange with the check and the receipt from the
24 band that played on June 5th, 2015. Have you ever
25 seen the band sheet for that night?

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1 position has lasted?
2 A. She's new. It's been within the last eight weeks.
3 Q. How about Rob Lamble, how long has he had that job?
4 A. As long as I've worked for Wild Wing, so before.
5 Q. So that predates you in the Axum Capital Partners
6 acquisition?
7 A. Yes, sir.
8 Q. What's his official title?
9 A. Booking agent. He's not necessarily employed by
10 Wild Wing Café, he just handles the booking.
11 Q. I got you. Do you know if he's with an outside
12 agency?
13 A. I think he owns his own business.
14 Q. You wouldn't know the name of that, would you?
15 A. I do not. I know his email. His email is
16 earformusic.com.
17 Q. Is it Rob@earformusic?
18 A. Yeah, actually I think it is --
19 RobLamble@earformusic.com. Ear for, f-o-r, not the
20 number.
21 Q. Do you as a general manager have to issue payments
22 to the band for their showing up and playing?
23 A. We get checks once a month from our home office
24 from the accounting department. And then we -- the
25 closing manager on duty, which ever one whether it

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1 A. I have not.
2 Q. And because you weren't there it wouldn't be in
3 your email?
4 A. No, it would not.
5 Q. Do you know who in corporate would have been the
6 person that would receive that type of email on
7 June 5th, 2015?
8 A. I have no idea who it would be. It would probably
9 either have been Ashley or a former employee. A
10 former marketing director is Simone if I had to
11 guess.
12 Q. Okay.
13 A. Hey, no rush, but do you have any idea how long
14 this is going to take? It's getting lunch time.
15 I'm starting to freak out about my restaurant.
16 Q. A lot of it is going to be whether or not -- it
17 could forty-five minutes depending on whether or
18 not I have the right documentation or not. Because
19 a lot of this I just need you to confirm that I'm
20 not missing something. If so, I'll move very
21 quickly.
22 A. I know I probably wasn't supposed to ask that, but
23 I'm just --
24 Q. No. No, that's fine. It was a fair question. Do
25 you know who Simone Bruderer is?

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1 A. She used to be head of marketing.
 2 Q. She was employed by the corporate office?
 3 A. She was.
 4 Q. There is a Ray Lauman. L-a --
 5 A. Lauman.
 6 Q. Lauman. Who's Ray?
 7 A. You asked me that earlier.
 8 Q. I did? I'm sorry.
 9 A. He's a -- he was a regional manager.
 10 Q. That's right. And then you've told us who Ashley
 11 Sadeghy was. We've talked about Sharon Hooks,
 12 we've talked about Bill Richardson, we've talked
 13 about Craig Hefner.
 14 So was Simone Bruderer that notified Ray,
 15 Ashley, Sharon, Bill and Craig about the booking of
 16 the Ricky Young Band for that June 5th concert? I
 17 know that you're not on that email so I'm just
 18 representing that to you.
 19 She described them as one of the "Red-hot and
 20 rising music award nominees." Do you know anything
 21 about the red-hot and rising music awards?
 22 A. No.
 23 Q. Do you know anything about Wing Jam?
 24 A. Wing Jam is a once a year event that they do for
 25 general managers and franchise owners.

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1 Do you understand the e-blast goes to these loyalty
 2 members that we talked about?
 3 A. Uh-huh.
 4 Q. Do you know if they e-blast to a broader market
 5 outside of the loyalty members?
 6 A. I have no idea.
 7 Q. This is one where she talks about the ally rallies.
 8 So she says "This is going to be one of those shows
 9 we want to make sure we're talking about in ally
 10 rallies and getting staff excited around."
 11 Do you know anything about, I mean, this is --
 12 this email was sent on March 30th, so it's more
 13 than two months ahead of the event. Do you
 14 typically talk about a concert in your ally rallies
 15 two months in advance?
 16 A. I mean, if I was to get an email like that from my
 17 home office we would.
 18 Q. Has it happened before to you?
 19 A. No. Not that I recall.
 20 Q. Do you know where Simone Bruderer is now?
 21 A. I do not know.
 22 Q. And Ashley, do you know where she lives?
 23 A. I do not. I think she, I mean, she lives in
 24 Charlotte.
 25 Q. Somewhere in that area up there. Okay.

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1 Q. Okay. Yeah, because she has a little paragraph
 2 here that says "Craig, you'll hear more about this
 3 in an upcoming email and at Wing Jam."
 4 She says because basically the Ricky Young
 5 Band is a red-hot and rising music award nominee
 6 this is going to be "bigger show". He's from
 7 Columbia and he's \$2,000 plus a \$75,000 -- I mean,
 8 sorry, a \$75.00 bar tab.
 9 Do you know \$2,000 compares to a typical
 10 Saturday night musician playing?
 11 A. I mean, that's -- it just depends on the bands. We
 12 have bands come in from a duo which could be \$400
 13 to a more popular band that we have play once a
 14 month that gets, I think, it's \$1,200 that they
 15 get. So two thousand, I mean, that's --
 16 Q. Is that on the high end?
 17 A. That's on the high end but it's nothing crazy.
 18 Q. Can you think of other musicians that you've seen
 19 that have been paid \$2,000 for an appearance
 20 before?
 21 A. I mean, when I was serving there we had bands that
 22 come in there that they paid \$5,000 for.
 23 Q. Can you give some examples of who those bands are?
 24 A. Don't recall. Ten years ago. I don't know.
 25 Q. No, I'm with you. And so she mentions an e-blast.

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1 A. I don't know her address.
 2 Q. So Labor report. What you do with the Labor report
 3 is essentially you tracking --
 4 A. How many dollars we spend on labor that day.
 5 Q. That's it. And you look at that pretty much every
 6 day, right?
 7 A. Uh-huh.
 8 Q. Product and Mix report. What is that looking at?
 9 A. That's our product mix. That shows what we've sold
 10 that day between certain times.
 11 Q. Are you using that to know what to purchase? I
 12 mean, what is the function of that?
 13 A. I'm using that to make sure we don't have any
 14 product that's gone missing.
 15 Q. Oh, okay. So this is --
 16 A. If I have twenty-five Bud Lights and it says I sold
 17 twenty-three there should be one left over and if
 18 there's not one left over then there's questions
 19 asked.
 20 Q. So that may take out a whole list of my questions
 21 then. So some restaurants and bars that I've had
 22 the pleasure depositing in the past use separate
 23 alcohol inventory management systems than they do
 24 from their point of sale systems. Is your
 25 inventory also all within the NCR Aloha system --

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1 A. No.
 2 Q. -- so that it can tell you?
 3 A. We -- we have Aloha that manages what's rang in at
 4 the computers in the front but our inventory system
 5 is a system called Compeat which everything from
 6 Aloha transfers into Compeat at the end of every
 7 night.
 8 Q. So they integrate with each other one way. Aloha
 9 goes into Compeat. Does Compeat also go into
 10 Aloha?
 11 A. I don't know.
 12 Q. The reason I'm asking is would that Product and Mix
 13 report tell you I started the night with twenty-
 14 seven Bud Lights, I now have twenty-three Bud
 15 Lights. I mean, in other words, do you have that
 16 starting point based on the Compeat data?
 17 A. Not on -- not daily. We only do inventory once a
 18 week. So its Monday to Sunday.
 19 Q. So how do you true-up inventory when you do that?
 20 Do you take a weeks worth of Product and Mix
 21 report, do you take a week long product mix, make
 22 sure that all of it's accounted for? How do you
 23 check inventory to make sure it's not disappearing
 24 and unaccounted for.
 25 A. Well, currently what I do is I have bartenders do

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1 actual inventory counts there is a possibility that
 2 they might be in one of the bank boxes from back
 3 then but I don't -- I didn't personally put them in
 4 there so I can't testify that it's there or not.
 5 Q. I got you.
 6 A. I know that since I've been there all the count
 7 sheets are in all the bank boxes.
 8 Q. If you wanted to confirm the product mix of what
 9 was actually sold be it Bud Lights versus Fireball
 10 shots on June 5th, 2015, where would you go to now
 11 to go back and look?
 12 A. I mean, I could just go into Aloha and go to the
 13 product mix for that day.
 14 Q. So the Product Mix report is the right report is
 15 the right report for that?
 16 A. Uh-huh. But it will give you like a total
 17 restaurant. It won't give you a table.
 18 Q. Can you do it by shift though?
 19 A. Just Monday or Tuesday it is not day or night
 20 separation. Not to my knowledge anyways.
 21 Q. Because some of the other reports do have shift
 22 designations on it, don't they?
 23 A. Uh-huh.
 24 Q. That's a "yes"?
 25 A. Yes, sir.

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1 what's called hot counts. So they'll count, like,
 2 the top six items that we sell behind the bar,
 3 house vodka, Bud Light, Miller Lite. And then they
 4 write up their own counts day and night kind of
 5 making them accountable for their own stuff.
 6 If you're bartending in the morning and I'm
 7 bartending at night and I come in and you counted
 8 four hundred Bud Lights and I count three hundred
 9 and fifty, I'm going to go to you and say, you
 10 know, I'm not taking over this bar until you show
 11 me --
 12 Q. What happened to the --
 13 A. -- where these other fifty Bud Lights are. And
 14 then when we do -- the managers do the weekly
 15 inventory, we see what's missing, then we can take
 16 their counts and go back and narrow it down to
 17 which day or which shift the product went missing
 18 on.
 19 Q. I'm with you. Do you know how it was done in 2015?
 20 A. I do not.
 21 Q. Do you have records going back to 2015 that are
 22 paper records at least?
 23 A. I do not.
 24 Q. It's either in -- do you know --
 25 A. No, the actual, wait, let me take that back. The

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1 Q. But you don't think the Product Mix does, right?
 2 A. Yes, sir. To my knowledge. --
 3 Q. Restaurant Sales report. I think we've talked
 4 about that. That's the one where you're looking
 5 at, sort of, aggregate sales data?
 6 A. Yes, sir.
 7 Q. What do you use that for?
 8 A. Just to, I mean, if you're looking at throughout
 9 the day to -- to let you where you're at in sales.
 10 Q. So that's kind of a constant check, right?
 11 A. Yes, sir.
 12 Q. And that's one of things that you use the Pulse app
 13 we talked about before, right?
 14 A. Yes, sir.
 15 Q. Servers Sales report. Why do care what a
 16 particular server is doing on their sales report?
 17 A. To see, I mean, you can look at it and see which --
 18 which server's pushing something that you want them
 19 to push. Which server, you know, if I've got two
 20 servers that have equal size sections but one
 21 server does \$800 in sales and another server does
 22 \$400 in sales, what is the \$800 server doing that
 23 the \$400 server's not doing.
 24 Q. Do you ever tell servers to push alcohol?
 25 A. No.

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1 Q. They're never told to push any type of alcohol?
 2 A. I mean, we'll tell them that we're featuring
 3 something, like, you know, Saint Patty's Day, make
 4 sure everyone knows that we have green beer, but we
 5 never say, you know, push all the vodka you can
 6 drink.
 7 Q. Well, no, I'm not saying that. But I'm saying, in
 8 other words, do you like have alcohol specials that
 9 you tell them, hey, make sure that you're pushing
 10 the green special today.
 11 A. We have -- we have LTO features.
 12 Q. What's LTO? I don't know that.
 13 A. Limited Time Offer.
 14 Q. And the Limited Time Offers, those apply to alcohol
 15 sales as well?
 16 A. Whenever we have in LTO or a Limited Time Offer
 17 menu come out, we'll typically have a couple food
 18 items and a couple drinks that we're featuring.
 19 Q. Do any of your alcohol vendors ever come to you and
 20 say, hey, we've got a new product we'd like for you
 21 to buy "x" amount of it?
 22 A. They try.
 23 Q. Yeah. I mean, do you guys ever --
 24 A. We, I mean, I don't typically. I have budgets I
 25 have to stick to so if they have a new product I'll

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1 Q. C-a-t-e?
 2 A. C-a-t-e.
 3 Q. And they pronounce it Cate?
 4 A. I think.
 5 Q. So COO, CFO, how do they communicate your budget to
 6 you?
 7 A. Well, we -- once a year around June, me and the
 8 regional managers sit down or the GMs and the
 9 regional managers sit down and kind of put together
 10 a rough draft of what we feel our budget should be.
 11 And they take that information to the home
 12 office and typically by December or January they
 13 send out the final draft. The regional manager
 14 comes to the store and goes over the budget with
 15 you for the upcoming year.
 16 Q. How itemized it this? I mean, first, I mean, in
 17 terms of time. Do you have daily budgets, weekly
 18 budgets, monthly budgets or is it, hey, this is
 19 just your annual budget?
 20 A. They give us the annual budget and then it's up to
 21 us as GMs to come down with the monthly, weekly,
 22 daily.
 23 Q. I got you.
 24 A. And based off of sales, I mean, you know, if I'm
 25 supposed to buy this much food for \$50,000 in sales

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1 try it and if I feel like it would be good in our
 2 market I might bring in a case or two or a small
 3 pony keg to see how well it sells.
 4 Q. What about aging alcohol inventory. Like, if you
 5 know a keg's been on tap and it's got to come off
 6 do you ever tell the staff, hey, we got to get this
 7 off tap? Fire sale, discount, do whatever you got
 8 to do, get rid of this tap?
 9 A. I don't have any taps go bad so, no, I haven't
 10 personally.
 11 Q. What about like food. I mean, do you guys ever
 12 say, look, we've got to run a special on "x"
 13 because we've got to get "x" out of the
 14 refrigerator?
 15 A. No, because we keep our product pretty low.
 16 Q. Who sets the budget for you guys?
 17 A. The home office.
 18 Q. Do you know the person?
 19 A. I think it's a combination of people, COO, CFO,
 20 CEO.
 21 Q. I think you told be the COO's name, but can you
 22 remind me?
 23 A. The COO?
 24 Q. Yeah.
 25 A. Is Mark Cate, C-a-t-e.

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1 but we're trending to do \$40,000 in sales,
 2 obviously I'm going to adjust my expenditures on
 3 the food to less.
 4 Q. If I wanted to find out the budget for 2015 for the
 5 Vista Wings or if you wanted to find that out for
 6 that Vista Wings location, what would you do to
 7 find out the 2015 budget?
 8 A. I'd have to contact the home office.
 9 Q. And if I wanted to find out if they were on or off
 10 budget, same thing, I've got to contact the home
 11 office to find that out?
 12 A. Uh-huh.
 13 Q. Is that a "yes"?
 14 A. Yes, sir.
 15 Q. Do you know if there's any type of formal way that
 16 you have to track and report your budget
 17 performance as a general manager to the home
 18 office?
 19 A. What do you mean?
 20 Q. Let's say that things are not going well, right?
 21 Let's say the Vista Wing location is dragging
 22 behind, it's not doing well in sales. Is there a
 23 process that as a general manager or you've been
 24 trained if that's happening in my store I need to
 25 do x, y and z in terms of communication and

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1 reporting to the home office.

2 A. I mean, I'm just -- I'm in daily contacts with my

3 regional manager. I think I talk to him more than

4 I talk to my wife.

5 Q. I believe that. So you were receiving those

6 ranking reports in 2015?

7 A. I don't believe so.

8 Q. You don't think so?

9 A. I think that was something recently started.

10 Q. I understand. Do you have any idea on how the

11 financial performance of the Vista Wings location

12 was doing in 2015?

13 A. I do not.

14 Q. If I wanted to find that out, I should go to the

15 corporate office to find that out?

16 A. Yes, sir.

17 Q. Anybody else I should talk to about that?

18 A. Not to my knowledge. Actually, let me go back, we

19 did have the ranking reports in 2015. That's how I

20 knew I was number 1. I think they started that in

21 2014. It was a little different format than what

22 we have now though.

23 Q. Were there people gunning for you because you were

24 on top? Were you all competitive with each other

25 about --

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1 there's not targets that they're supposed to be

2 shooting for?

3 A. I mean, I mainly use it to see if a servers not

4 ringing in Coca-Colas or if maybe that, you know,

5 that server that sold \$800 compared to the \$400,

6 what was it? Did she sell more food, did she sell

7 more alcohol, did she up sell the alcohol as

8 opposed to, you know, instead of a four dollar

9 house vodka she sold them eight dollar Grey Goose.

10 Q. Is that upselling frowned upon, is that a bad

11 thing?

12 A. No, upselling's great. If someone wants a vodka

13 tonic I'd rather them buy an eight dollar vodka

14 than a four dollar vodka.

15 Q. And this is a total aside, but it saves me from

16 doing some documents, the Bulleit bourbon is on one

17 of the checkouts that I have from a witness or may

18 be a witness and I'm trying to know, is Bulleit

19 bourbon a house bourbon?

20 A. No. No.

21 Q. A step up from a house bourbon?

22 A. Yeah. It's a call liquor.

23 Q. Comparative Employee Sales report, I guess, the

24 name says what you use it for, I'm assuming?

25 A. Uh-huh.

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1 MR. YARBOROUGH: Object to form.

2 A. Who's not, man, who doesn't want to be on top.

3 Q. Was it like trash talk back and forth between the

4 general managers on that?

5 A. No. No. No.

6 Q. There's plenty of it in our law firm, I promise

7 you.

8 A. On the record? None at all.

9 Q. On the record? No. I got you. So I think I can

10 skip over Sales report. I mean, you use the

11 summary report basically just to get a broader

12 angle to look at things, right?

13 A. Yeah, it breaks it down as a lunch and a dinner as

14 opposed to hourly.

15 Q. Server Sales Detail report. How's that different

16 than the Server Sales report?

17 A. Servers sales report is just a solid number for

18 their total sales. The detailed shows how much

19 food they sold, how much liquor they sold, how much

20 beer they sold, how much retail, how much

21 nonalcoholic beverages.

22 Q. Do the servers have targets within each of those

23 categories?

24 A. No.

25 Q. So, I guess, what's the point of the detail if

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1 Q. Yes?

2 A. Yes, sir.

3 Q. Hourly Sales and Labor report. Is that the same

4 Sales and Labor report we talked about just broken

5 down on an hourly basis?

6 A. Yes, sir.

7 Q. Overtime Warning report, I can imagine what you're

8 using that for. Obviously you want to avoid

9 overtime, right?

10 A. Correct.

11 Q. Are you having to pay overtime to servers?

12 A. They can get overtime.

13 Q. Edited Punches report. I don't know what that is.

14 A. Edited Punches is in case a server -- if something

15 gets past to a manager and a server or a bartender

16 or a kitchen guy doesn't clock out at the

17 appropriate time and it runs until six-thirty in

18 the morning when the system refreshes, what we'll

19 do is we'll go back and look at what time someone

20 in their area left about the same time they would

21 leave.

22 So if I've got two closing servers and the

23 closer clocked out at 1:50 and one server didn't

24 clock out then I would revert that server back to

25 1:50 as well.

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1 Q. That makes sense. All right. Payment reports.
 2 What do you use the Payment reports for?
 3 A. Just shows what -- what payments we have had
 4 whether it be this total is cash payments, this
 5 total is Visa, this total is Mastercard.
 6 Q. Oh, that's not payments by Wild Wing to, that's
 7 payment received?
 8 A. Correct.
 9 Q. Why do you need that? What does that number tell
 10 you?
 11 A. I mean, just to monitor like our credit cards
 12 compared to cash.
 13 Q. Why does that ratio matter or that comparison
 14 matter?
 15 A. It -- I mean, just, I guess, just to see what kind
 16 of clientele you have in the restaurant.
 17 Q. Product Mix --
 18 A. I was going to add the major difference is Harbison
 19 had a lot. When I was at Columbiana, they had a
 20 lot more credit card -- or credit card payments
 21 than case payments. Vista has a lot more cash
 22 payments. They -- still has more credit card
 23 payments but the ratios a lot -- a lot closer.
 24 Q. And what does that tell you as a manager. I'm not
 25 savvy enough to deduce anything from it. What do

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1 sold three Grey Goose's, can you slice --
 2 A. No, you can slice it up into just product itself.
 3 You can go just food, you can go just liquor, you
 4 can go just Grey Goose, but that report doesn't
 5 breakdown to who sold what. You'd have to go
 6 through their actual checkout.
 7 Q. And I'll tell you frankly the reason why I'm asking
 8 is that a lot of the people that have been deposed,
 9 I think they were drinking at different locations
 10 but I think we may know what some of them were
 11 drinking. And so I'm trying to figure out who
 12 served who and maybe the bourbon and ginger is too
 13 common of a drink to tell us anything.
 14 But is there a way to see, this guy, because I
 15 know this guy -- I know two guys are drinking
 16 bourbons and gingers, is there a report I can look
 17 at and say, well, these individual servers or
 18 bartenders sold bourbons and gingers that night to
 19 narrow down to narrow down the scope of who was
 20 selling bourbons and gingers?
 21 A. I mean, only if their -- they would have had a tab.
 22 Like, I mean, obviously if they're sitting at a
 23 table servers don't run tabs because they have a
 24 table number to go off of. People at the bar when
 25 we're busy, they typically run tabs so it would go

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1 you deduce from that comparing Harbison to Lady
 2 Street?
 3 A. More people in -- on Lady Street use cash.
 4 Q. Is that good for business or is that bad for
 5 business?
 6 A. For servers, typically it's bad. People who pay
 7 cash don't typically tip as much.
 8 Q. I got you. That makes sense. It is easier to part
 9 with a number on a page than it is with an actual,
 10 physical dollar.
 11 A. I only got twenty bucks left. Give her a dollar.
 12 Q. I'm with you. I'm with you. So Product Mix
 13 report. What do you use that for?
 14 A. Like, you asked earlier, it's just what sold on a
 15 shift. What's rang in.
 16 Q. Can it compare Belvedere vodka to Grey Goose vodka?
 17 I mean --
 18 A. I mean, it can show you how many Belvedere's you
 19 rang in that night and how many Grey Gooses you
 20 rang in that night.
 21 Q. I got you. So it can get pretty detailed?
 22 A. Every time you hit a button to sell something it
 23 goes on that report.
 24 Q. How can you slice that report up? Can you slice it
 25 up to say Cera Falls sold thirteen Belvedere's, she

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1 against their name.
 2 Q. I mean, not the customer, I mean the employee that
 3 was actually selling the bourbon and ginger. Is
 4 there a way that I could use the report functions
 5 to generate a report to say Cera Falls or Bradley
 6 Johnson or whoever sold thirteen bourbon and
 7 gingers that night but Santana Griffin sold zero
 8 bourbon and gingers. Can I do that?
 9 A. It's possible. I've never had to do that.
 10 Q. Void reports. What do you use that for?
 11 A. Just to see how many items have been voided off
 12 that night?
 13 Q. Just help us understand. What generates a void?
 14 A. It's a delete. Something that wasn't made. I like
 15 to look at under my number and make sure that
 16 everything that's on there is things that I took
 17 off. We currently use magnetic cards so employees
 18 can't use a managers number to take something off
 19 and be sneaky.
 20 Q. I got you.
 21 A. I know that in the past that -- I don't know about
 22 2015, but I know that in the past that servers have
 23 used manager numbers to take a cash payment from a
 24 customer and then delete off a wing and keep that
 25 cash.

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1 Q. I'm with you. I got you.
 2 A. Dishonest people.
 3 Q. I got you. And the reprints is the only other one
 4 that --
 5 A. Reprints is -- I use that in case a customer calls
 6 and says that they weren't charged properly. I can
 7 go back in the system to what time they were here,
 8 how they did their payment, reprint their check and
 9 if they were charged properly let them know that
 10 they were charged properly, this is what was
 11 charged. Or if they were charge incorrectly that's
 12 where I'd go to find out how much we need to refund
 13 them.
 14 Q. What would the customer have to give you for you to
 15 find their check to reprint it?
 16 A. Well, if they have their check that they got that
 17 night that always make it easier. There's a check
 18 number on there that I can just go pull up. But I
 19 can ask questions like do you remember where you
 20 were sitting, do you remember who your server was,
 21 what time were you here, what date were you here.
 22 If they used a credit, if they did use a credit
 23 card, then give me the last four digits of the
 24 number and I can look it up that way.
 25 Q. Got you. Got you.

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1 A. That requires going through paper after paper.
 2 Q. If you run it by --
 3 A. If they don't have the receipt with them and I
 4 can't look up a ticket number, then I got to take
 5 that information and go digging.
 6 Q. I got you. I think this part is going to move
 7 pretty quickly. But what I don't want you to do is
 8 rush and accidentally say something inaccurate.
 9 (PLAINTIFF'S EXHIBIT 4 MARKED FOR
 10 IDENTIFICATION PURPOSES (5 pages) - NCR BOOK
 11 SECTION RESTAURANT SALE REPORT.)
 12 Q. So handing you what we've marked as Exhibit 4.
 13 This is a -- this is from that same NCR book there
 14 that we've called Exhibit 3.
 15 This is just, sort of, deeper into the book
 16 itself. This is a section I found on Restaurant
 17 Sales report. And I just want you to look at it
 18 and does this generally describe what you see now
 19 when you use Aloha and try to use a sales report;
 20 is this accurate?
 21 A. I can't even read that, man. I can't even tell
 22 what that says.
 23 Q. So the front page of Exhibit 4 says, Sale Summary
 24 at the top there and then it's got a summary that
 25 has a gross, voids, promos, surcharges, things like

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1 that.
 2 Then there's a line, then it goes into net
 3 sales, then there's a line, it goes into adjusted
 4 gross with payments, surcharges, orders, additional
 5 charges, that sort of -- I mean, is that a typical
 6 sales summary screen?
 7 A. Yeah, I would assume so. I mean, I think it looks
 8 a little different now. Then we have, I don't
 9 know, I guess, a different format, but it's -- it's
 10 about the same.
 11 Q. Do you know when the format changed from what
 12 appears to be in this book? Again, this book is
 13 copyrighted 2013 so this is the closest that I have
 14 found to the 2015 time period. But I don't want to
 15 assume that it's current or even reflects those in
 16 2015 if that's not true so can you say if this
 17 looks to be accurate?
 18 A. I mean based off of what it's supposed to be it
 19 looks to be accurate. I mean, it looks like a
 20 sales summary. I mean, it's got all your voids,
 21 your comps, your promos, net sales. I mean, that's
 22 what typically shows up on the one at the
 23 restaurant now.
 24 Q. And then on the next there's a net view, a sales
 25 view, a labor view on the following page and

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1 there's descriptions of what each view shows you.
 2 And if you peruse that and let me know if that
 3 appears to be accurate to the system that's in
 4 place at Wild Wing now.
 5 A. I mean, it looks close.
 6 Q. Is there anything materially different or
 7 inaccurate to what you have in place at Wild Wing
 8 now?
 9 A. Not that I can visually tell. But like I said, I
 10 can barely see that.
 11 Q. So going further into it, there's a payments view
 12 that will show you Mastercard, check account, Visa,
 13 a comps view, they're talking about manager comps,
 14 various different types of comps.
 15 A. I haven't personally looked through these reports.
 16 Q. Promos view, do you use the promos view for
 17 anything?
 18 A. No, I mean, I can pretty much look at the Sales
 19 Summary.
 20 Q. To determine all of that?
 21 A. Yes, sir.
 22 Q. So if you're using anything, you're really just
 23 using the Summary's view?
 24 A. For the most part, yes.
 25 MR. BLAKE: I'm going to mark this as

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1 Exhibit 5.
 2 (PLAINTIFF'S EXHIBIT 5 MARKED FOR
 3 IDENTIFICATION PURPOSES (1 page) - WEEKLY
 4 SUMMARY REPORT.)
 5 Q. This is what I think is the Weekly Summary. Does
 6 that look like the type of Weekly Summary reports
 7 that you look at?
 8 A. Part of it, yes.
 9 Q. It doesn't look like there's a complete screen shot
 10 of what they're showing there, but I mean, so the
 11 description of it says that this just sort of
 12 provides you sales information by category and a
 13 breakdown of payment by cash, noncash, promos, gift
 14 certificates, et cetera.
 15 A. Yeah, this is the sales report that we put with our
 16 credit cards at the end of the night.
 17 (PLAINTIFF'S EXHIBIT 6 MARKED FOR
 18 IDENTIFICATION PURPOSES (27 pages) - SALES
 19 REPORTS.)
 20 Q. I hand you what we've marked as Exhibit 6. Is this
 21 the type of sales report that you put in the box at
 22 the end of the night?
 23 A. It is.
 24 Q. So this is actually a stack, I've got them paper
 25 clipped together as they were produced to me. And

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1 Q. 729 Lady Street, that's the location of the Wild
 2 Wing Café in the Vista, right?
 3 A. Correct.
 4 Q. Then it says non-reset totals. Do you know what
 5 those non-reset totals represent?
 6 A. I do not.
 7 Q. Do that nine million dollar, does that mean
 8 anything to you?
 9 A. I have no idea what that is.
 10 Q. Gross sales. What are gross sales?
 11 A. Total sales including tax.
 12 Q. When it says, less voids, unordered voids, do you
 13 know what that means?
 14 A. I do not.
 15 Q. So this should I read this to say that on May 21st,
 16 2015 the Wild Wing Café in the Vista sold a total
 17 of \$6,033.59 worth of product?
 18 A. After taxes, not of product, the net sales would be
 19 of the product. That's -- that's including the
 20 comps, the promos and the taxes, the gross -- the
 21 gross total.
 22 Q. So to reach a net sales number what will have to
 23 back out? Taxes?
 24 A. Yeah.
 25 Q. Anything else?

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1 we'll just let it all be Exhibit 6 if everyone's
 2 okay with that. It's the sales report for May
 3 21st, 2015, May 22nd, 2015, May 23rd, 2015, May
 4 28th, 2015, May 29th, 2015, May 30th, 2015, June
 5 4th, 2015, June 5th, 2015 and June 6th, 2015. And
 6 these all indicated that you printed them off; is
 7 that correct?
 8 A. Correct.
 9 Q. And you printed them off on March 5th, 2018,
 10 correct?
 11 A. It looks that way.
 12 Q. And running these, I'm just going by the dates on
 13 the top here, looks like running all nine of these
 14 reports took you a total of three minutes; is that
 15 right?
 16 A. Correct.
 17 Q. And you were able to generate these in the Aloha
 18 system, right?
 19 A. Correct.
 20 Q. What did you have to input to generate these sales
 21 reports? Just the date?
 22 A. Correct.
 23 Q. So the first box up there says 22-Wild Wing Café
 24 Vista. Is 22 your location number?
 25 A. I don't know what that number means.

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1 A. Uh-uh.
 2 Q. That's a "no", right?
 3 A. No, sir. I mean, comps there's still something
 4 made, promos there's still something made, it's
 5 just how they were handled.
 6 Q. How are promos accounted for? Like, do you get
 7 reimbursed promos by the corporate office? Do you
 8 get reimbursed promos by third parties?
 9 A. Depends on the promo. Whatever -- I know that we
 10 do some -- some marketing trades with, like,
 11 Gamecock radio.
 12 Q. And when you say, marketing trade, what does that
 13 mean. I don't know that the jury's going to
 14 understand that one.
 15 A. I'm pretty sure that they -- they do some of our
 16 payments through gift vouchers as opposed to just
 17 straight up cash.
 18 Q. And one of those gift vouchers would come in as a
 19 promo?
 20 A. Uh-huh.
 21 Q. That's a "yes"?
 22 A. Yes, sir.
 23 Q. So what about, like, vendors. Do vendors do
 24 promos?
 25 A. No. Another promo we do is half off wings so that

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1 would be considered a promo. I don't know what
 2 promos they had at this time though.
 3 Q. Do you get penalized in your rankings or the
 4 evaluation of your performance with the use the
 5 promos?
 6 A. Yes. Penalize is not -- I wouldn't say the word
 7 but we definitely have a goal as to what level of
 8 percentage of promos we want to run.
 9 Q. And corporate propagates that goal?
 10 A. Yes, sir.
 11 Q. How do they communicate that goal to you?
 12 A. It's on my budget.
 13 Q. And so they're telling you, your promos need to be
 14 capped at some percentage of your budget?
 15 A. Uh-huh.
 16 Q. Is that a "yes"?
 17 A. Yes, sir.
 18 Q. Do you know what for 2017 your promo cap was?
 19 A. I don't recall. I'd have to review the budget.
 20 Right now it varies from month to month.
 21 Q. So I thought you got an annual budget and then you
 22 were able to carve it up on a monthly, weekly or
 23 daily. Is there somebody else --
 24 A. No, they give me a annual budget and a monthly
 25 budget and then we break it down to weekly and

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1 reading that right? Do you see that over the sales
 2 -- if you go to sales category, it says, net, NIS,
 3 comps.
 4 A. That's SLS, net sales.
 5 Q. Thank you. That helps. So then there's these two
 6 big sort of columns here. One says GC/REV items
 7 sold. What does GC/REV mean?
 8 A. Gift cards. I think revenue, I believe.
 9 Q. Room rental donations.
 10 A. It's pretty much anything that's not food or
 11 alcohol.
 12 Q. I understand. That makes more sense. So student
 13 hoop 1 day, student hoop 3 day. Do you know what
 14 any of these things mean?
 15 A. They're a lot of -- to me it looks like a lot of
 16 old promos or old specials we would have in place
 17 that just haven't been taken out of the system. I
 18 mean, the green shamrocks, they stay in there
 19 because we do it every year.
 20 Q. I got you. And then so -- and then it's continued
 21 over there. I got you.
 22 A. Uh-huh.
 23 Q. So what are the bonus bucks and bonus gift cards?
 24 Are those for loyalty members?
 25 A. Where are you at?

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1 daily.
 2 Q. I understand. So they give you a monthly budget
 3 and an annual budget?
 4 A. Uh-huh.
 5 Q. Was that true in 2015 as well?
 6 A. I would assume so, yes.
 7 Q. So comps are something different than promos.
 8 Comps we understand to be things that you talked
 9 about earlier. Like, there's a -- the customer's
 10 not happy, the food is burned, they've changed
 11 their mind, that sort of thing, right?
 12 A. Comps would be some kind of issue. Bug -- bug in a
 13 glass, hair on the food, something burnt.
 14 Q. What about like a spill? Is a spill a comp?
 15 A. A spill would be a comp.
 16 Q. So why would you have to comp \$102 worth of liquor,
 17 for example, on this day?
 18 A. I mean, it could be multiple reasons. You know,
 19 broken glasses, dirty glasses, drinks made wrong.
 20 A lot of comps, a lot of the fruity drinks we sell,
 21 people have issues, customers have issues with when
 22 they get them and it doesn't taste like they
 23 thought it was going to taste. And we don't really
 24 argue with the customers.
 25 Q. I understand. And then it says, net, NIS? Am I

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1 Q. I'm sorry. I'm on GC items sold continued.
 2 There's bonus bucks, there's bonus GC.
 3 A. Bonus bucks was every year. For Christmas we do,
 4 if you buy a \$50 gift card, you get a \$10 bonus
 5 buck so -- for you to use yourself. \$20 bonus gift
 6 card, I've never used that before. I don't know
 7 what that is.
 8 Q. And then the second page, and I'm still here on
 9 this May 21st, 2015 report. So that's you tracking
 10 the total number of, not you, the store, is
 11 tracking the total number of non-cash payments for
 12 the day, right?
 13 A. Correct.
 14 Q. Is there a place where the cash payments are
 15 tallied to get a total, total number of payments?
 16 A. I mean, the cash payments, I mean, I don't see one.
 17 I mean, the cash payments would be deposited at the
 18 end of the night, added into with the total of tips
 19 paid out.
 20 Q. And then there's, if I go down to the comp, there's
 21 a server/nComp percentage. What does that mean?
 22 A. That's the server comp percentage we talked about
 23 earlier. If a server made a mistake, the kitchen
 24 is if the kitchen made a mistake, customer is if a
 25 customer doesn't like something or, you know,

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1 everything was made properly but the customer just
2 doesn't want it. Promo certificates would be Wild
3 Bucks. Employee food is employee food.
4 Military percent, ten percent off for all
5 military on food. Bar comp would be something that
6 a -- a bartender or a manager wants to buy for a --
7 a guest. Spill would be spill. Manager food is
8 manager food.
9 Q. You offered Blue Cross Blue/Shield employees a
10 twenty percent discount, right?
11 A. Uh-huh.
12 Q. That's a "yes"?
13 A. Yes, sir.
14 Q. And then going to pay outs, these categories. What
15 are these categories here?
16 A. That's what they are. We don't necessarily use
17 them all though.
18 Q. I guess, I'm just trying to -- so is that people
19 that are not employees? Is that what that means?
20 A. No, it's just you're doing a paid out, out of the
21 cash drawer. If I as a manager need to go to
22 Publix to buy cilantro or garlic powder or
23 something that we need for the kitchen it would go
24 under paid out food.
25 Q. Why is there a payout for doorman?

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1 walked up to the bar and said, "I want a Bud Light
2 draft, never mind I don't want a Bud Light."
3 Because the draft was never poured --
4 A. They deleted it off.
5 Q. -- it needed to be voided.
6 A. Uh-huh.
7 Q. I got you. And that's why, you said you checked
8 the voids to make sure that they're proper voids
9 and not something sneaky?
10 A. Correct.
11 Q. I got you. Sales by day part by category. What
12 time frame constitutes lunch?
13 A. Open until four p.m.
14 Q. And then dinner is four till when?
15 A. Four to ten.
16 Q. And the late night is ten till when?
17 A. Till two a.m.
18 Q. Is two a.m. the standard closing time?
19 A. Yes, last call is at one-thirty, doors lock at two.
20 Q. At that was true in 2015 as well?
21 A. Yes, sir. Now, there are some times when you'll
22 sales or payments cashed out after two, but that's
23 just people that are closing out their tabs. At
24 two -- at two a.m. drinks and everything gets taken
25 away. And if someone needs a ride, that's when we

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1 A. Back in the past we -- I know that we do hourly
2 wages for doormen now, but I know back in 2008 when
3 I was a server doormen were not hourly employees.
4 They got a cash payout that they had to claim on
5 their own 1099.
6 Q. Do you know when that practice stopped?
7 A. I do not. I know that they were on hourly wages at
8 the time of 2015. I'm pretty sure that stopped
9 whenever Axum took over, if I had to guess.
10 Q. Probably a good idea. Do you guys still do
11 cigarette sales?
12 A. No, sir. I don't think we've ever done cigarette
13 sales.
14 Q. I saw it on there that's why I was curious about
15 that. So voids, why are voids different than a
16 comp?
17 A. A void is not made. A comp is made. A comp pulls
18 from the inventory. So if my guy cooks a burger,
19 burns the burger and throws it in the trash, I comp
20 it off then it pulls from my inventory. If I
21 delete the burger, it never pulls it from the
22 inventory.
23 Q. I'm with you, okay. So, for example, here's a, on
24 this third page here, I'm looking at draft. That's
25 saying somebody voided a draft as in a customer

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1 -- a lot of times we will sit there and wait on
2 them.
3 Q. Do you typically have police in the parking lot at
4 the Vista Wild Wings?
5 A. There are police in the parking lot right now
6 currently, but they're not for us, they're for the
7 establishment next door.
8 Q. Which one's next door?
9 A. Blue.
10 Q. What is that?
11 A. It is a nightclub.
12 Q. Was that there in 2015, do you know?
13 A. It was.
14 Q. What conversation have you with the city police
15 department or anyone from the city about that?
16 Anything?
17 A. What do you mean?
18 Q. In other words, how do you know that they're there
19 for Blue and not for Wild Wing?
20 A. Because Blue pays the police officers to be there.
21 Q. Have you talked to the Blue people about that?
22 A. I mean, I haven't had any reason to talk to them.
23 Q. I guess I'm just wondering how do you know that
24 Blue's paying for the police officers to be there?
25 A. I mean, I've spoken with the police officers and, I

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1 mean, I know that they're moonlighting.
 2 Q. I understand. Are they in uniform or not in
 3 uniform?
 4 A. They are.
 5 Q. Do you know Justin Poage? I think I've asked you
 6 that, you never talked to Justin Poage,
 7 specifically?
 8 A. No, sir.
 9 Q. Do you know the name of any of the officers that
 10 you've spoken to out there in the parking lot?
 11 A. No, sir.
 12 (PLAINTIFF'S EXHIBIT 7 MARKED FOR
 13 IDENTIFICATION PURPOSES (1 page) - UP BAR
 14 CUSTOMER CHECK.)
 15 Q. So I've handed you what I've marked as Exhibit 7.
 16 And again, so the server line up there, it says,
 17 Up Bar PM 2. How can I find out who was working at
 18 that bar on June 5th, 2015?
 19 A. You'd have to talk with probably Beau, Brad --
 20 Bradley, because he was at the up bar. I don't
 21 know if he was alone or not.
 22 Q. I understand. Are the tips that are written on --
 23 this is a check, right? A customer check?
 24 A. This is.
 25 Q. And it has a tip on there. It says, five dollars,

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1 Q. What does the slash 1 mean? There's only one
 2 person sitting in the seat?
 3 A. Ticket 1.
 4 Q. Ticket 1.
 5 A. So, I mean, if you and me go in and sit side by
 6 side at position 117 at the bar, I could be ticket
 7 1, you could be ticket 2.
 8 Q. I understand. Is there a, like, a position map and
 9 really the reason I'm asking is if somebody -- is
 10 there a position for, hey I walk up and get a drink
 11 and I'm going to close it out, am I assigned a
 12 position if I just walk up and get a drink?
 13 A. I mean, if you're walking up to get a drink and
 14 closing out immediately, no.
 15 Q. Would that come up blank or would there be an
 16 automatically assigned position.
 17 A. It would be an automatic assigned random number.
 18 Q. Is that true for that guest number? Is a guest
 19 number always zero unless they put in a guest
 20 number?
 21 A. We don't -- I don't even know how to put in a guest
 22 number for our restaurant. That's just something
 23 that's on the check.
 24 Q. That's good to know. So true for tables as well
 25 because I do sometimes see guest numbers on table

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1 right?
 2 A. Uh-huh.
 3 Q. Is that tip -- if there were two bartenders is that
 4 tip split between those two bartenders?
 5 A. It is.
 6 Q. Is it split with anybody else?
 7 A. No, just which ever bartenders are working.
 8 Q. At that bar?
 9 A. Correct.
 10 Q. Do you all tip, like, bussers, for example?
 11 A. No, sir.
 12 Q. So if a tip is on Cera Falls check like the next
 13 one here, that's Cera Falls tip, not someone else's
 14 tip, right?
 15 A. Correct.
 16 Q. She doesn't have to share that with the bar, for
 17 example?
 18 A. No, she does not.
 19 Q. I've asked you about the Bulleit bourbon already.
 20 There's a number that says, U 117/1. What does
 21 that U 117/1 mean to you?
 22 A. That means Up, seat 117.
 23 Q. So that's a designation of where the person was
 24 sitting?
 25 A. Correct.

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1 records that you guys have produced in this case.
 2 Do you know anything about that?
 3 A. Uh-huh.
 4 (Cell phone interruption.)
 5 Q. Do you need to take that?
 6 A. No.
 7 (PLAINTIFF'S EXHIBIT 8 MARKED FOR
 8 IDENTIFICATION PURPOSES (1 page) - CUSTOMER
 9 CHECK.)
 10 Q. So I have handed you what we've marked as Exhibit
 11 8. This is a customer check as well, right?
 12 A. Yes, sir.
 13 Q. And this has the detail of what the actual customer
 14 ordered, right?
 15 A. Correct.
 16 Q. Are there any other things that can be printed that
 17 show what a specific customer ordered other than
 18 the check?
 19 A. Well, this doesn't show a specific customer. This
 20 shows a specific able.
 21 Q. So that's table 6-1, right?
 22 A. Uh-huh.
 23 Q. And is twelve a.m. the time the tab was closed or
 24 the time the tab was opened?
 25 A. Tab was closed is what it looks like.

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1 Q. So and again the guest number is zero because it's
2 not populated, right? This says, reprint number 1.
3 Does that mean it's the first time this check has
4 been reprinted?
5 A. No, it means it's the first reprint.
6 Q. What does that mean?
7 A. I mean, it wouldn't say anything underneath guest
8 if you had printed it -- if Cera had printed it one
9 time and then if she prints it again, then it says,
10 reprint 1.
11 Q. I'm with you there. So besides this check, is
12 there anyway for me to see the drinks that were
13 ordered at this table?
14 A. No, not to my knowledge.
15 (PLAINTIFF'S EXHIBIT 9 MARKED FOR
16 IDENTIFICATION PURPOSES (1 page) - CUSTOMER
17 CHECK.)
18 Q. I'll hand you what we've marked as Exhibit 9. So
19 this is a -- do you know the difference between
20 table 5-1 versus table 6-1?
21 A. Yeah, they're two different tables.
22 Q. This are two tables along the right-hand wall of
23 the restaurant --
24 A. Uh-huh.
25 Q. -- is that right?

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1 A. Yes, sir. Underneath the windows.
2 Q. Do you know which ones closer to the stage --
3 A. Table 6.
4 Q. Table 6 is the closest to the stage, right?
5 A. Correct.
6 Q. And table 5 is the one immediately behind it?
7 A. Correct.
8 Q. And this says, 12:10 a.m. is the closeout time?
9 A. Correct.
10 Q. This one has a guest number on it, do you know how
11 that got entered?
12 A. I have no idea? I mean, maybe the system just
13 generates a guestimate of how many people are there
14 but we don't put in guest numbers or check numbers
15 like that.
16 Q. This says, reprint for the second time?
17 A. Correct.
18 Q. Do you know anything about the first reprint of
19 this?
20 A. I wasn't there so I do not know.
21 Q. Did you reprint this for the second time?
22 A. I mean, it doesn't show a reprint whenever I print
23 them off. This is printed from the computers up-
24 front. The server has to reprint it.
25 Q. The server has to reprint it. What reason would a

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1 server have to reprint a check twice?
2 A. Multiple reasons. They sat it on the table and it
3 gets knocked on the floor and stepped on, it gets
4 ripped, the printer runs out of paper, she lays it
5 down and misplaces it when she's multitasking.
6 Q. This talks about a promo cert minus \$20.00. Do you
7 know what that is?
8 A. I do not.
9 Q. How can I find out what that is?
10 A. You'd probably have to talk to the manager on duty
11 who did the promo, if they could recall that from
12 that long ago. And it's possible that it could be
13 in the records for that day.
14 Q. What do you mean in the records for that day?
15 A. Like in that server's checkout. If there was a
16 handwritten promo or if there was a promo
17 certificate, Wild Bucks.
18 (PLAINTIFF'S EXHIBIT 10 MARKED FOR
19 IDENTIFICATION PURPOSES (1 page) - CUSTOMER
20 CHECK.)
21 Q. Got you. I'm handing you what we've marked as
22 Exhibit 10. I'll represent to you that Jeffrey
23 Miller is somebody who's been identified in this
24 case as the father of a former Defendant in this
25 action named Aaron Miller. And we know that he had

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1 a table downstairs near the stage. This appears to
2 be a credit card receipt from the Up Bar at 10:55
3 p.m.; is that correct?
4 A. It would appear so.
5 Q. And again, I will talk to Bradley about who was
6 working up there. Do you have everything you need
7 on this document to pull the check that's
8 associated with this purchase? You got the last
9 four digits, you got the time, you got the
10 location, you could pull the check to find out what
11 Jeffrey Miller ordered here, right?
12 A. You should be able to.
13 Q. Is there any other information you would need?
14 A. No. Time, check number, four digits.
15 (PLAINTIFF'S EXHIBIT 11 MARKED FOR
16 IDENTIFICATION PURPOSES (1 page) - CUSTOMER
17 CHECK.)
18 Q. Same thing for Mr. Wielkie on this order. Do you
19 have everything you need to actually figure out
20 what Mr. Wielkie ordered and paid for here?
21 A. Yes, sir.
22 (PLAINTIFF'S EXHIBIT 12 MARKED FOR
23 IDENTIFICATION PURPOSES (1 page) - CUSTOMER
24 CHECK.)
25 Q. Same question of Mr. Seiple. This is 8:35, that

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1 says down middle bar, correct?

2 A. Correct.

3 Q. You don't happen to know who was working at the

4 down middle bar on June 5th, 2015, do you?

5 A. I do not know.

6 Q. Do you know the best way for me to figure that out?

7 A. I mean, again, you would have to talk with someone

8 who worked that evening. I mean, Beau -- sorry, I

9 keep calling him Beau. Bradley would probably be

10 able to give you that because if -- you can go back

11 and look at the Labor reports to see who was

12 clocked in as a bartender.

13 And by process of elimination what time they

14 got there, if Bradley was upstairs with bartender

15 A, then that means that bartenders B, C and D were

16 downstairs.

17 MR. BLAKE: This doesn't need to be

18 marked.

19 Q. This is really just a question I have. I've looked

20 at some of these credit card payments. I'll give

21 you two to compare side by side so you see what I'm

22 asking. You'll see that one of them, the one for

23 \$73.57, it has the person's name, Angela Boyd, out

24 to the right. Do you see that?

25 A. Uh-huh.

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1 those two.

2 MR. YARBOROUGH: Okay.

3 (PLAINTIFF'S EXHIBIT 13 MARKED FOR

4 IDENTIFICATION PURPOSES (2 pages) - SERVER

5 CHECKOUT.)

6 Q. So I'm handing you what we've marked as 13. What's

7 the name of this report here?

8 A. This is the Server Checkout.

9 Q. So that's the Server Checkout. Is it the detailed

10 one?

11 A. It's just the regular Server Checkout. It shows

12 what their sales -- what they did that day, what

13 credit cards they had, what their tips are and what

14 their cash out is.

15 Q. And all this is in the NCR Aloha system, right?

16 A. Correct.

17 Q. Why track liquor, beer and draft separately?

18 A. Just to see percentage based off of whenever we do

19 our -- our PNLs to know what's the most popular

20 item instead of just looking at alcohol as a whole.

21 Q. I got you. But why is it useful to you. What does

22 that tell you?

23 A. It tells me people are drinking more liquor than

24 beer, what's popular right now.

25 Q. But how are you controlling for the price

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1 Q. That's the customer's name on that credit card,

2 right?

3 A. Correct.

4 Q. And then I see one that doesn't have the customer's

5 name. Do you see that? The \$54.36 one?

6 A. Yes, sir.

7 Q. How does that happen? Do you know how that

8 happens?

9 A. I mean it could have happened if someone has a

10 prepaid card.

11 Q. Any other reason why because they're both

12 Mastercards, they're both the same server, the same

13 shift.

14 A. I mean, they're the only two things I can think of

15 would be if it was like a prepaid card that you got

16 from the gas station that you put money on or if

17 the bank that's affiliated with that card doesn't

18 offer that information when you slide the card.

19 Q. Do some banks withhold the cardholders information?

20 A. Some smaller banks do. Some smaller credit unions

21 or also if this account is a new account.

22 MR. YARBOROUGH: Shaun, can you tell me

23 what you're looking at. This -- I think the one

24 you gave me is the wrong one.

25 MR. BLAKE: Sure. Here it is. Here are

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1 difference between the two?

2 A. -- What do you mean?

3 Q. Like if liquor cost twice as much as beer then

4 those gross numbers don't really mean much, do

5 they?

6 A. I mean, but liquor doesn't always cost twice as

7 much as beer.

8 Q. I got you. That's fair. I mean, does that inform

9 on -- what do you do with that information once

10 you're armed with it? Does it inform how you form

11 your budgets?

12 A. I mean, that's what our home office would use it

13 for more than likely. It's just a matter of

14 tracking your business and what you're doing.

15 Knowledge is power.

16 Q. Do you have sales per guest targets?

17 A. Up until recently we didn't, but we do now.

18 Q. When did those get put in place?

19 A. I mean, they're not really put in place. They're

20 just suggested by our regional manager to try to

21 help increase sales.

22 Q. How was that communicated to you?

23 A. Phone call.

24 Q. Tell me about that phone call.

25 A. I mean, it was just a short and brief phone call.

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1 We were just going through an operations summary
 2 meeting that he had prior and he said our guest
 3 checks were averaging at \$16, if we could push for
 4 them to be a little higher to help increase sales
 5 because right now we're down in sales.
 6 Q. Did he give you a target sales per guest number?
 7 A. Eighteen dollars. Just a two dollar increase.
 8 Push an appetizer.
 9 Q. But if you don't have accurate guest input data
 10 because you don't put guests into the system, how
 11 do you get accurate output?
 12 A. We look at ticket sales instead of guests. We look
 13 at a ticket average.
 14 Q. But how do you know if there's four people on the
 15 ticket or twelve?
 16 A. We don't.
 17 Q. So you just -- do make some kind of assumption?
 18 A. I mean, I don't -- I don't make any assumptions.
 19 Q. So it is your goal to get it to \$18 per ticket or
 20 \$18 per guest?
 21 A. Per ticket. I mean, it's all an average so --
 22 Q. Do you keep track of the number of people that are
 23 in the building on a given night?
 24 A. Only on specialty nights if we get close to
 25 capacity.

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1 Q. What do mean like speciality nights, like --
 2 A. I mean, like for Saint Patty's Day we'll be keeping
 3 track. And if we start to fill up and we go on a
 4 wait we'll go around and do a guest count and use a
 5 clicker to make sure that we're not breaking fire
 6 code.
 7 Q. But you don't track on a Tuesday night how many
 8 people are in the restaurant?
 9 A. No, we -- we only use half the restaurant.
 10 Q. And Saturday's you all aren't tracking for capacity
 11 concerns either?
 12 A. I mean, if it -- if -- if we start getting full we
 13 do.
 14 Q. Do you ever document the counts anywhere so you can
 15 go back and say historically Saturday's over the
 16 summer are slow, Saturday's in September were
 17 packed every Saturday?
 18 A. No, we just do it based off of sales.
 19 Q. What are true comp sales versus the kind of comps
 20 that we've talked about?
 21 A. Where are you at?
 22 Q. I'm sorry. The very bottom on Page 2 of that
 23 Exhibit.
 24 A. They're the same.
 25 Q. Are there comps that don't fall into that true comp

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1 category?
 2 A. Not to my knowledge.
 3 Q. There's a PPA number there, do you see that, on --
 4 I'm going through the sales detail.
 5 A. Uh-huh.
 6 Q. I see there's a net sales number, wing bar sold,
 7 alcohol sales, food sales, gift cards, appetizer
 8 sales, why is Yuengling its own line?
 9 A. I don't know.
 10 Q. Do you track Yuengling sales specifically?
 11 A. No, we do not.
 12 Q. Did, I guess, at some point?
 13 A. That just might be something that was put in for
 14 some kind of promotion and never taken out.
 15 Q. Sales per guest. That's what we were talking
 16 about. And then PPA. What's PPA?
 17 A. I have no idea.
 18 MR. BLAKE: Exhibit 14.
 19 (PLAINTIFF'S EXHIBIT 14 MARKED FOR
 20 IDENTIFICATION PURPOSES (4 pages) - BAND
 21 COMP.)
 22 Q. Fourteen. There's a band comp. Band/DJ comp.
 23 That's food and alcohol provided to the band; is
 24 that right?
 25 A. Correct.

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1 Q. Did a manager have to sign off on that?
 2 A. Yes, sir.
 3 (PLAINTIFF'S EXHIBIT 15 MARKED FOR
 4 IDENTIFICATION PURPOSES (2 pages) - BAND
 5 COMP.)
 6 Q. And I'll represent to you -- I will show it to you
 7 so you don't have to take my word for it. So part
 8 of it's done at the bar and then Cera Falls, if you
 9 look down and see she's got a band comp on her,
 10 correct?
 11 A. Uh-huh.
 12 Q. So a manager had to sign off on that one, too?
 13 A. Correct.
 14 Q. Is there a particular reason why you would give the
 15 band more than Wild Wing agreed to give the band in
 16 terms of comps?
 17 A. I mean, this would just purely be an educated
 18 guess. Well, first of all, I don't know how much
 19 they gave the band that night.
 20 Q. Well, seventy-five according to that email.
 21 A. Seventy-five. Okay. So it looks like that the
 22 band was split up between two checks, one at the
 23 bar, one with Cera. Twenty-five off of there, so
 24 fifty should have gone to the bar.
 25 There is a very real chance that some band

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1 members walked out on tabs because they have done
2 that before in the past. So it gets comped off as
3 a band comp and then addressed with the band at a
4 later date.

5 Q. Whose job would it be to address that with the
6 band?

7 A. That would be the home office.

8 (PLAINTIFF'S EXHIBIT 16 MARKED FOR
9 IDENTIFICATION PURPOSES (5 pages) -
10 PREPRINTS.)

11 Q. So this is a description of the reprints function
12 from that same NCR Aloha book. Can you just flip
13 through here and see this is the same process that
14 you use when you need to do a reprint?

15 A. It appears the same all the way up to the guest
16 check. I haven't done a checkout reprint in a
17 while.

18 Q. What do you mean a checkout reprint?

19 A. On the second to the last page where it talks about
20 reprinting a checkout, I haven't had to reprint a
21 checkout in quite some time so --

22 Q. I got you. But the first three pages are okay?

23 A. Yeah, I've never seen the change font page before
24 but I've never had to go in and change the font.
25 File menu looks the same. The reprint menu looks

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1 on Page 10 to 11 Row 7 there.

2 A. All right. "And as far as security employees, Wild
3 Wing Café doesn't hire security employees. We have
4 doormen which is totally different. They are not
5 involved in any type of security. The only thing
6 they do is they stand at the front door and they
7 check IDs and make sure they are 21 years old and
8 they let them in. So as far as security employees,
9 I don't think that really applies. That's all we
10 have, Your Honor."

11 Q. And my question is, is that an accurate description
12 of the doorman's function?

13 MR. YARBOROUGH: I'm going to stop you
14 here, Shaun. I don't think this document has been
15 exchanged in discovery and I don't think you
16 identified it in your notice so I would like to
17 take a minute with my client. Pursuant to Rule
18 30(j).

19 MR. BLAKE: You can have a 30(j) discuss
20 the document, but anything that's otherwise unless
21 you're asserting your privilege --

22 MR. YARBOROUGH: I agree.

23 MR. BLAKE: -- it is not appropriate.

24 MR. YARBOROUGH: Yeah, I'm saying that we
25 can stop the deposition. I get to discuss this

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1 the same. The guest check looks the same.

2 Q. And that reprint all function. You can reprint all
3 the guest checks for a shift, right?

4 A. If you would like to. Yes.

5 Q. Have you ever exported guest checks before because
6 I was reading about an export function in here.
7 Have you ever exported it that way you didn't have
8 to actually print it on paper.

9 A. I have not.

10 Q. Do you know whether or not that NCR Aloha system
11 has an export function on it so it can be exported
12 out?

13 A. I do not know.

14 (PLAINTIFF'S EXHIBIT 17 MARKED FOR
15 IDENTIFICATION PURPOSES (3 pages) - TRANSCRIPT
16 OF RECORD.)

17 Q. So this is a transcript that was gotten from a
18 hearing that we had. There's a statement in here
19 that I just want to get your input on. And it
20 starts on the bottom of Page 10. And this is a
21 statement by your counsel and it starts on Line 25
22 on the bottom of page 10.

23 And the discussion here is about security
24 employees for Wild Wing. If you could read out
25 loud from the bottom -- basically beginning of 25

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1 document with my client.

2 MR. BLAKE: Okay. It has been produced
3 by you, however.

4 MR. YARBOROUGH: In discovery. Is it in
5 your notice that you were going to use this in the
6 deposition because that's what the rule requires.

7 MR. BLAKE: It's -- well, you all can
8 discuss it just be mindful of the limitations.

9 MR. YARBOROUGH: I know the rule.

10 MR. BLAKE: Okay.
11 (Off the record.)

12 (By Mr. Blake)

13 Q. I asked you if that was an accurate description of
14 the doorman position?

15 A. And honestly, yes and no. I mean, they do stand at
16 the door and check IDs. Maybe with them not
17 working there they didn't fully understand, but
18 when any kind of altercation occurs or starts to
19 occur it is the responsibility of the doorman to --
20 to help stop it as soon as possible and, if need
21 be, escort the guest out.

22 Q. So what did you review besides this Exhibit that
23 you have whenever you were out of this room?

24 A. Nothing.

25 Q. You just reviewed this?

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1 A. Uh-huh.
 2 Q. Did you have any conversations with anybody about
 3 this document?
 4 A. Just Will.
 5 Q. Just Will. And were instructed on how to answer my
 6 question?
 7 A. No, I was told to be honest.
 8 Q. So what training does Wild Wing provide its
 9 employees on how to intervene in an altercation?
 10 A. You've already asked me that.
 11 Q. Have we covered all of it?
 12 A. I mean, as far as training goes it was when I was
 13 there doing doorman work they just informed me not
 14 to physically harm anybody. That we're there to
 15 neutralize the situation, to separate any guests
 16 that may be causing an altercation and to use your
 17 body without physically harming anyone to escort
 18 them out, if possible.
 19 Q. And besides a conversation with somebody, did you
 20 receive any other training on how to do that?
 21 A. Uh-uh.
 22 Q. And not just you personally now, but since you've
 23 been a general manager have you ever seen Wild Wing
 24 provide any doorman employee any training on how to
 25 conduct that quote/unquote that function that you

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1 information goes to the home office only. As far
 2 as Taylor Hedgecocks, I believe you said.
 3 Q. Hedgepath. Tell me about that.
 4 A. I've never personally looked up his information so
 5 I can't answer on that until I do.
 6 Q. What about Nicholas Packett?
 7 A. The same.
 8 Q. Is there any other place besides that learned tab
 9 where the training materials Wild Wing would have
 10 provided those individuals regarding the function
 11 of security that you described, would there be any
 12 other place where that information should be
 13 located?
 14 A. The home office could possibly have hard copies.
 15 Q. And by hard copies what would you expect there to
 16 be hard copies of?
 17 A. Whatever training they went over, if they had it.
 18 Q. So there's courses for food safety and alcohol
 19 safety, is there any courses that doormen go
 20 through regarding safe ways to intervene in any
 21 type of altercation?
 22 A. To my recollection, I haven't ever seen any.
 23 Q. And you've never participated in that, correct?
 24 A. No, I have not.
 25 Q. You've never checked to make sure that the door

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1 just described?
 2 A. I mean, I haven't witnessed it.
 3 Q. Do you have any personal knowledge over any of the
 4 training that Marsden Cox received?
 5 A. I do not have any personal knowledge.
 6 Q. How about Taylor Hedgepath?
 7 A. No personal knowledge.
 8 Q. How about Nicholas Packett.
 9 A. No personal knowledge.
 10 Q. Do you have any documents that you have access to
 11 that can show me the training that any of these
 12 individuals received regarding that security
 13 function?
 14 A. I don't believe I do.
 15 Q. Do you know if any such documents even exist?
 16 A. I don't know if they do or don't.
 17 Q. Would you be able to view that if you logged into
 18 their personnel files on People Matter and looked
 19 in their learned tabs?
 20 A. I don't know if I have access to theirs, but I
 21 could try.
 22 Q. You would have access to them if they were employed
 23 at Vista Wild Wing though, however, as a former
 24 employee?
 25 A. Well, Marsden Cox is now a salary manager so his

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1 staff that were working in one of your Wild Wing
 2 locations had received any such training, correct?
 3 A. The staff that I've always employed at my locations
 4 were already doormen affiliated with Wild Wing Café
 5 so I've never had to train or bring in anybody new.
 6 Q. Have you seen this book before?
 7 MR. BLAKE: Let's go ahead and mark it.
 8 (PLAINTIFF'S EXHIBIT 18 MARKED FOR
 9 IDENTIFICATION PURPOSES (19 pages) - TRAIN THE
 10 TRAINER BOOKLET.)
 11 A. Train the Trainer?
 12 Q. Yes.
 13 A. I have.
 14 Q. Who makes this book?
 15 A. I believe that was made by Eric Combs, the former
 16 head of training for the home office.
 17 Q. So there was a head of training position at the
 18 home office as well?
 19 A. Yes, sir.
 20 Q. His name is Eric what?
 21 A. Combs. C-o-m-b-s.
 22 Q. Combs. Do you know when his employment ended?
 23 A. I believe it was within the last year.
 24 Q. Was he working there in 2015?
 25 A. Yes, sir.

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1 Q. So best of your knowledge Eric Combs is the guy
2 behind this Train the Trainer document?
3 A. Correct.
4 Q. This says, revised July 2015. Obviously, I'm more
5 concerned with what was in place in June of 2015.
6 Do you know if there's an earlier version of this
7 document?
8 A. To my knowledge, no. But, I mean, revised could be
9 they went in and added one line.
10 Q. Well, that was my next question. Do you know what
11 changes happened in July of 2015 to this?
12 A. I do not.
13 Q. Do you recall getting communications, hey guys,
14 we've updated the Train the Trainer book?
15 A. I do not recall.
16 Q. Have you ever gotten an email that you recall or
17 another kind of notification about a change in
18 training materials?
19 A. Not to my recollection.
20 Q. Do you employee the training of the Train the
21 Trainer?
22 A. For training employees now?
23 Q. No, of training --
24 A. For training trainers?
25 Q. Yeah.

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1 A. That looks like that server training manual.
2 Q. Does that look like the same one that's on the
3 Google drive now?
4 A. It does.
5 Q. And what is this used for?
6 A. This is used for training servers.
7 Q. Are there any other materials used for training
8 servers?
9 A. Food Facts.
10 Q. Anything else?
11 A. That and the shadowing program.
12 Q. The last revision date on this one is August of
13 2014. Are you aware of any other updates to the
14 server training manual since August of 2014?
15 A. I am not.
16 Q. Same thing. This is propagated by the corporate
17 office, correct?
18 A. Correct.
19 Q. And do you know if it was Eric Combs that came out
20 with this?
21 A. I don't know. I just know he did -- he just did
22 the Train the Trainer program because he talked
23 about it multiple times at corporate meetings.
24 Q. Is there anybody else in the corporate training
25 office now?

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1 A. We do.
2 Q. And by "we" meaning the --
3 A. I mean, me and my management team.
4 Q. So is this the copy of Train the Trainer that you
5 use now?
6 A. It's the copy that I keep in my office.
7 Q. And does it have that revised July 2015 date on the
8 bottom of it?
9 A. I have no idea.
10 Q. Do you recall getting a newer version since July of
11 2015?
12 A. No, it's uploaded on our drive.
13 Q. What do you mean, uploaded on our drive? What do
14 you mean?
15 A. On Google Drive.
16 Q. There's a Google Drive that has these records?
17 A. It has all the manuals.
18 Q. I'm going to go through each of the manuals then
19 and get you to confirm for me whether what I'm
20 looking at is adequate here.
21 (PLAINTIFF'S EXHIBIT 19 MARKED FOR
22 IDENTIFICATION PURPOSES (11 pages) - SERVER
23 TRAINER MANUAL.)
24 Q. So I handed you what we've marked as Exhibit 19.
25 Can you identify this document?

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1 A. As of right now I don't know who's over that
2 department.
3 Q. Do you believe that department still exist?
4 A. It's possible.
5 Q. Do you know of any other employee that's ever
6 worked in that department besides Eric Combs?
7 A. He's had some understudies, but I don't recall
8 their names.
9 Q. How did they communicate any information to you
10 besides the use of Google Drive?
11 A. Google Drive is the only way that they put the
12 manuals on. As far as communication, it was either
13 email or face to face in meetings.
14 (PLAINTIFF'S EXHIBIT 20 MARKED FOR
15 IDENTIFICATION PURPOSES (15 pages) - BAR FACTS
16 MANUAL.)
17 Q. Can you identify this one for us?
18 A. This is the bar facts manual.
19 Q. Looks like it was updated August of 2014; is that
20 correct?
21 A. It would appear so.
22 Q. Are you aware of any updates to this manual since
23 August of 2014?
24 A. Not to my knowledge.
25 Q. Does this appear to look like the one that's on

Page 201	Page 203
1 Google Drive? 2 A. It does. 3 Q. Do you know who the author of this manual is? 4 A. I do not. 5 Q. What is the use of this manual? 6 A. The use of this manual is obviously if we're going 7 to train a new bartender, bar back, servers, as far 8 as ServSafe protocols, how to recognize 9 intoxication, how to control it, how to interact 10 with guests, the differences between standards for 11 people of who are of legal drinking age, male/ 12 female size, signs of intoxication, how to handle 13 the situations. That's pretty much it. Different 14 styles of alcohol, beers and lagers, ales. Just a 15 little bit of knowledge about your craft. 16 Q. So I asked for Wild Wing to tell me of any time any 17 of its employees have been either terminated or 18 there was an adverse employment action taken 19 against them due to failing to follow policies and 20 procedures such as this manual. 21 A. Uh-huh. 22 Q. And I haven't been told of any. Are you aware of 23 any time any employee at Wild Wing has ever failed 24 to follow the bar facts manual? 25 A. Has ever failed to follow it?	1 Q. You qualified your answer, you said they've been 2 pretty good. I'm not asking if they were pretty 3 good. I'm asking whether or not to your knowledge 4 any employee that you've ever managed at Wild Wing 5 has ever violated this manual? 6 A. To my knowledge, no. 7 Q. Same for your server manual, correct? 8 A. Correct. 9 Q. So you've never had to take any adverse employment 10 action against any employee for failing to follow 11 any of the rules and requirements, policies and 12 procedures of Wild Wing in how they serve food or 13 alcohol to its customers? 14 A. I mean, I've personally never had to reprimand 15 anybody. 16 Q. Are you aware of it happening with other managers? 17 A. I don't recall. 18 Q. You don't recall ever hearing that any managers 19 ever had to take any adverse employment action 20 against any employee for how it served Wild Wing's 21 customers? 22 A. I mean, to my knowledge right now, no. That's 23 about as honest as I can be, honesty; I really 24 don't know. I haven't experienced it or recall of 25 anytime.
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1 Q. Yes. 2 A. Not to my knowledge. 3 Q. Never in your history as a manager or a general 4 manager has any employee of Wild Wing ever failed 5 to follow this manual? 6 A. I mean, not that I'm aware of. And I've never had 7 to terminate anyone for not following the 8 procedures in the manual. 9 Q. You've never had to reprimand a bartender for 10 letting a customer get too intoxicated? 11 A. No, because if they happen to get intoxicated based 12 off of medical conditions or if they're on any kind 13 of medication that we don't know about that 14 obviously one beer makes them act a little 15 different than five beers, my bartenders have been 16 pretty good at following the standards offering 17 them food, offering them nonalcoholic beverages, 18 notifying a manager, finding out how they're 19 getting home, getting them a ride. Sometimes we've 20 even paid for rides. 21 Q. Well, they've been better than pretty good, they've 22 been perfect, right? You've never had any 23 bartender ever violate this manual? 24 MR. YARBOROUGH: I'm going to object. 25 Asked and answered.	1 Q. Have you ever seen an intoxicated patron in a Wild 2 Wing? 3 A. I have. 4 Q. And so every time that happened it was because of 5 some medical condition? 6 A. No. No, there's people that have come in 7 intoxicated before that we refused service to. 8 There's some people that have seemed fine and then 9 all of a sudden went zero to sixty in a matter of 10 minutes. But in my experience it's always been 11 addressed with notifying a manager and making sure 12 they got home safe. 13 Q. So in your experience no Wild Wing bartender has 14 ever served alcohol to an intoxicated person? 15 A. I mean, not that I've witnessed. 16 Q. And not just that you haven't witnessed. That 17 you've ever seen of or learned about through your 18 managerial capacity? 19 A. I mean, I know of some previous cases that -- from 20 surrounding Wild Wings. 21 Q. What does that mean? 22 A. I mean, it's where someone's overserved that I 23 haven't -- not in my locations, so. 24 Q. Where did you learn about those incidences? 25 A. Home office and the news.

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1 Q. Tell me about the home office. What have you
2 learned. Have they emailed you about events or
3 incidences that you're talking about?
4 A. No, I mean, they've -- we've had incidents come up
5 in the past to where they've said that if anyone
6 reaches out to -- refer all questions to the home
7 office.
8 Q. What were the incidents that led to that?
9 A. It was -- it was vague. I don't -- they -- they
10 didn't really say. They said they'd had an
11 incident at this location and that there might be
12 some media reaching out and if you hear from this
13 media please report -- have them report to the home
14 office.
15 Q. Did home office send such a communication about the
16 incident on June 5th, 2015?
17 A. Not to my knowledge. No.
18 Q. You've never seen a notification that says, if
19 anyone contacts you, Wild Wing employees, about the
20 pending litigation against Wild Wing by Mr. Finan,
21 direct those communications to home office or our
22 attorneys?
23 A. No, I don't believe so.
24 Q. But you seen it in other incidences?
25 A. Uh-huh.

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1 Q. How did you see that? Through an email?
2 A. Uh-huh.
3 Q. Is that a "yes"?
4 A. Yes, sir.
5 Q. And since you keep your emails, those emails should
6 still be in your inbox, yes?
7 A. They should be.
8 Q. Who typically sends those type of communications
9 out from the home office?
10 A. It just varies. Whoever is in charge of that
11 department at the time.
12 Q. Which department is that?
13 A. Right now I think it's marketing.
14 Q. And you said the news. What incidents have you
15 heard about on the news?
16 A. I mean, I don't recall what exactly happened, but I
17 mean, this is over a period of ten years of me
18 working here, so.
19 Q. Even if you don't understand the specifics, tell me
20 what you do recall about learning something from
21 the news.
22 A. Well, I mean, I know there was a report where we
23 were involved at Harbison where someone came in and
24 they were not intoxicated when they got there, but
25 they wound up leaving and going to some other

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1 locations and wound up getting in an accident and
2 we were involved in naming all the restaurants.
3 Q. Naming them in the news report?
4 A. Uh-huh.
5 Q. Is that a "yes"?
6 A. Yes, sir.
7 Q. Was there a lawsuit as a result of that?
8 A. I don't know if there was a full lawsuit.
9 Q. When you say a full lawsuit, what --
10 A. Like, I don't know if we went to court about it.
11 Q. Do you think there may have been some litigation
12 about it?
13 A. It's possible.
14 Q. Did you hear about a settlement payment or
15 something along those lines in that case?
16 A. I have not.
17 Q. What do you recall hearing about it?
18 A. That the accident happened and that Wild Wing's
19 attorneys were involved.
20 Q. Are you aware of the police ever responding to a
21 disturbance at the Wild Wing Café when you've been
22 working there?
23 A. As a whole for ten years?
24 Q. Yes.
25 A. I mean, there has been a time where the police had

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1 to be called.
2 Q. How many times can you think of that happening?
3 A. In the seven years I was at Harbison, I think I
4 called them three or four times.
5 Q. What would give rise to you calling the police?
6 A. Well, once we got some patrons outside if they were
7 endangering any other patrons. If we would have an
8 issue with -- like I said at the -- at Columbiana
9 we didn't really have doormen, very rarely do we
10 have doormen, so if a customer would not leave when
11 they were asked to leave we would have to call the
12 police officers to make sure that the customer was
13 escorted out without harming anyone.
14 Q. Anything else?
15 A. I don't believe so.
16 Q. Since you've been over at Vista Wings, here in the
17 Vista, beginning in February of 2017, have you ever
18 -- are you aware of the police ever having to
19 respond to any type of disturbance or issue at that
20 location?
21 A. One time when a lady passed out.
22 Q. When was that?
23 A. Four or five months ago. She had a diabetic
24 reaction and fell to the floor so we called 911 and
25 the police showed up first.

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1 Q. How did you learn it was a diabetic reaction?
 2 A. That's what her family members said.
 3 Q. Was there an incident report that had to be
 4 generated --
 5 A. There was.
 6 Q. -- internally when that happened? There was?
 7 A. Yes, sir.
 8 Q. Who completed that?
 9 A. Michael Gibson.
 10 Q. Michael Gibson. What is the policy or procedure
 11 about creating incident reports when something like
 12 that happens?
 13 A. You write up the incident report. You offer -- you
 14 write down what happened, the manager signs it, the
 15 -- a witness signs it whether it be an employee or
 16 a customer.
 17 Depending on the incident, if they need an
 18 ambulance, we offer an ambulance, call an ambulance
 19 which is what we did for that particular case. The
 20 customer refused to go in the ambulance. The
 21 customer signed the paperwork saying they refused.
 22 And then that paperwork is emailed to the home
 23 office.
 24 Q. Whose responsibility is it to email it to the home
 25 office?

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1 I've, like I said, I've been -- I like to keep the
 2 hard copies and then file them away at the end of
 3 the year.
 4 Q. How far back does that folder go?
 5 A. I don't know. I haven't looked through it. Never
 6 had a reason to look through it.
 7 Q. So in response to the discovery request for
 8 incident reports in this case, do you know if
 9 anyone looked through that physical folder for
 10 those records?
 11 A. For this case?
 12 Q. Yes.
 13 A. I don't believe so.
 14 Q. Does anyone besides you have access to that folder?
 15 A. If I -- if I recall correctly, I think I know it's
 16 in the -- the cabinet above my -- my desk.
 17 Q. Are you responsible for communicating with the
 18 insurance company regarding insurance claims? And
 19 when I say, the insurance, I mean the insurance
 20 company for Wild Wing.
 21 A. I am not.
 22 Q. Do you know whose responsibility that is?
 23 A. Home office.
 24 Q. Who's John Harper? Do you know John Harper?
 25 A. No.

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1 A. The manager on duty or myself if they don't do it.
 2 Q. Are those incident reports, the physical copies of
 3 them kept in the Vista Wings location?
 4 A. We do have a physical copy of that report.
 5 Q. Do you have the physical copy of any other reports
 6 that were created?
 7 A. I'd have to look through the bank boxes to see what
 8 they have from prior. That was the -- the one
 9 incident we've had since the year that I've been
 10 there.
 11 Q. The incident reports get, you said the bank box,
 12 are you talking the same bank box with the receipts
 13 in it?
 14 A. Uh-huh.
 15 Q. Is that typically where incident reports would
 16 otherwise be kept?
 17 A. Yeah, they would all be kept with -- either that or
 18 if there's a designated area. I know over at
 19 Columbiana I had an actual binder for customer
 20 incident reports. And then at the end of the year
 21 I would file it away in the last bank box of the
 22 year.
 23 Q. Have you seen any such folder or anything like that
 24 at the Vista Wing location?
 25 A. We do have a folder from pervious incidents, but

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1 Q. Is there a written policy and procedure on how
 2 incident reports are supposed to made?
 3 A. There has been emails sent on how to properly do
 4 them.
 5 Q. Who sends those emails; do you recall?
 6 A. Do not.
 7 Q. Have you received those emails though?
 8 A. Not recently.
 9 Q. Do they come from the home office?
 10 A. They do.
 11 Q. All right. Two more.
 12 (PLAINTIFF'S EXHIBIT 21 MARKED FOR
 13 IDENTIFICATION PURPOSES (36 pages) -
 14 ORIENTATION BOOKLET.)
 15 Q. So this is Number 21, this is an orientation
 16 booklet. This one does not have a control number
 17 on the bottom to tell me when it was last revised.
 18 Do you know who generates this orientation booklet?
 19 A. I do not.
 20 Q. Is this on your Google Drive?
 21 A. It is, I believe.
 22 Q. Are you responsible for using this orientation
 23 booklet to orientate new employees?
 24 A. We do. I've reviewed it multiple times so I don't
 25 exactly bring it out when I'm orientating new

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1 employees.

2 Q. And so do you require your managers to bring it out

3 and then you actually use it when they were

4 orientating the new employees?

5 A. They don't do orientation. I do.

6 Q. You do all orientation?

7 A. For the most part, yes.

8 Q. Do Wild Wing employees wear uniforms?

9 A. They do.

10 Q. Did they in 2015?

11 A. They did.

12 Q. What did they look like in 2015?

13 A. Bartenders wear black bar shirts, the servers wear

14 blue and red server shirts, hostesses where the

15 same blue and wear server shirts and doormen wear

16 black staff shirts.

17 Q. What do you mean by black staff shirts? How does

18 that differ from the bartender shirt?

19 A. The doorman has black and it's black and white with

20 a Wild Wing logo on the front and staff written on

21 the back. The bartender shirts are black with a

22 grayish-blueish Wild Wing and then some kind of bar

23 logo on the back whether it be a beer cap or draft

24 beer pouring from a tap.

25 (PLAINTIFF'S EXHIBIT 22 MARKED FOR

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1 Q. Are there any other manuals other than the ones

2 that are stacked here in front you on that Google

3 Drive?

4 A. Food -- Food Facts.

5 Q. So I don't have the Food Facts. Besides Food Facts

6 are there any other ones?

7 A. I don't believe so.

8 Q. And as far as you know, all the ones that are

9 stacked in front of you, those are the most current

10 versions of them?

11 A. As far as I know.

12 Q. And besides the one that we know says that it was

13 revised in July of 2015, as far as you know, they

14 are accurate as they were on June 5th, 2015?

15 A. As far as I know.

16 Q. Do you have any knowledge of any other policies or

17 procedures that are given to staff, meaning

18 servers, bartenders or doormen other than these

19 policies and procedures?

20 A. There is a front of house manual. It just

21 basically goes over how to be courteous to the

22 customers.

23 Q. Is that on the Google Drive as well?

24 A. Yes, sir.

25 Q. Was that out in 2015?

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1 IDENTIFICATION PURPOSES (47 pages) - TEAM

2 MEMBER POLICY MANUAL.)

3 Q. I'll hand you what we've marked as Exhibit --

4 A. Twenty-two.

5 Q. -- twenty-two. It's our last Exhibit. This

6 purports to be the team member policy manual and

7 handbook revised on November 6th, 2014. Are you

8 aware of any updates to this manual?

9 A. I am not.

10 Q. Is this on your Google Drive as well?

11 A. This is in -- we have physical copies at the store

12 and it's on People Matter when they get hired.

13 Q. This is what you were testifying about earlier they

14 have to go through in pieces?

15 A. Correct.

16 Q. This should have been provided to all the employees

17 that were working on June 5th, 2015 at Wild Wing,

18 yeah?

19 A. Correct.

20 Q. There should be some indication that they received

21 and reviewed this in their employment file,

22 shouldn't there?

23 A. To my knowledge, yes.

24 Q. Any reason why there wouldn't be?

25 A. Not to my knowledge.

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1 A. It should have been.

2 Q. All right. The employees are expected to abide by

3 these booklets, aren't they?

4 A. They are.

5 Q. And they were in June of 2015 as well, weren't

6 they?

7 A. They were.

8 Q. All right. That's all the questions I have for

9 now. I'm not going to indicate that the deposition

10 is closed because we have some outstanding

11 discovery issues.

12 It doesn't mean I'm necessarily going to need

13 to take your deposition again but I'm reserving the

14 right to argue with the court that I'm entitled to

15 do so based on outstanding discovery things that

16 aren't of any problem of yours right now. Okay?

17 Your attorneys may have questions for you. I

18 don't know if they do or not, but I appreciate your

19 time today. In case they don't, you've been most

20 cooperative and I thank you for it.

21 A. No problem.

22 MR. YARBOROUGH: Nothing for me. You're

23 done.

24 (Off the record.)

25 (Whereupon, the deposition adjourned at 1:22 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, Lisa F. Huffman, Verbatim Court Reporter and
3 Notary Public in and for the State of South Carolina, do
4 hereby certify that I reported the deposition of BRIAN
5 NEAL, on Tuesday, the 13th day of March, 2018; that the
6 witness was first duly sworn by me and that the
7 foregoing 216 pages constitute a true and correct
8 transcription of the said deposition.

9 I further certify that I am neither attorney nor
10 counsel for, nor related to or employed by any of the
11 parties connected with this action, nor am I financially
12 interested in said cause.

13 I further certify that the original of said
14 transcript was thereafter sealed by me and delivered to
15 SHAUN C. BLAKE, ESQUIRE, Rogers Lewis Jackson Mann &
16 Quinn, LLC, 1901 Main Street, Suite 1200, Columbia,
17 South Carolina, who will retain this sealed original
18 transcript and shall be responsible for filing same with
19 the Court prior to trial or any hearing which might
20 result in a final order on any issue.

21 In witness whereof, I have set my hand and seal
22 this 27th day of March, 2018.

23 _____
24 Lisa F. Huffman, Court Reporter
25 My Commission Expires July 7, 2025

Exhibit 19
Motion to Reconsider

From: Shaun C. Blake
To: "Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)"; "dbeniamini@sccourts.org"
Cc: William H. Yarborough; "Ryan C. Holt"; Jenkins Mann; Wes Jackson; Tyler Koester (tkoester@rogerslewis.com)
Subject: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018
Date: Tuesday, March 20, 2018 4:51:00 PM
Attachments: 2018-3-21 Proposed Order.docx

Dear Judge Benjamin,

Following up on our hearing dated March 2, 2018 in the above-referenced matter and your instructions, attached please find a proposed order for your consideration resolving the three (3) motions you heard on that day. I have previously presented the order to opposing counsel, and I have attempted to make such changes to it to the extent agreeable upon prior to submitting it for your review and execution. It is attached in Word format in the event you need to make any changes. If I can be of any further assistance in completing this order for execution, please let me know.

With highest professional regards,

Shaun C. Blake, Esq.
 Member

ROGERS LEWIS
ATTORNEYS AT LAW

Main: (803) 256-1268
 Direct: (803) 978-1965
 Cell: (803) 834-9335
 P.O. Box 11803 (29211)
 1901 Main Street, Suite 1200
 Columbia, SC 29201

The preceding email message (including any attachments) contains information that may be confidential, be protected by the attorney-client or other applicable privileges, or constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete it from your system. Use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

CIRCULAR 230 NOTICE: To comply with requirements imposed by the United States Treasury Department, any information regarding any U.S. federal tax matters contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, as advice for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed therein

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Richard A. Finan

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wings
Cafe – Columbia,

Defendant.

) IN THE COURT OF COMMON PLEAS
) THE FIFTH JUDICIAL CIRCUIT
)

) Civil Action No.: 2016-CP-40-07109
)

ORDER

THIS MATTER COMES BEFORE THE COURT on three motions: (1) Defendant Vista Wings, LLC's Motion to Quash dated November 20, 2017 ("Motion to Quash"); Plaintiff's Motion to Compel Subpoena Responses and Rule to Show Cause against Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC, dated November 22, 2017 ("Motion to Compel Subpoena Responses"); and Plaintiff's Motion to Compel Discovery By Vista Wings, LLC and for Appropriate Relief under Rule 37, SCRCP ("Motion to Compel Discovery"). The undersigned received and reviewed the motions and materials submitted by the Plaintiff and Vista Wings, LLC, prior to the hearing. On March 2, 2018, the undersigned received thorough oral argument and additional materials regarding these motions from Shaun C. Blake, Esq. on behalf of the Plaintiff and Ryan C. Holt, Esq. and William H. Yarborough, Esq. on behalf of Vista Wings, LLC.

The undersigned has reviewed and given consideration to the motions, the materials, and the arguments of counsel. Upon due consideration of all materials, arguments, and representations of counsel for the Defendant Vista Wings, LLC, and Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC (each of which

Defendant's counsel represents to be either parents or affiliates of the Defendant), the undersigned finds as follow pursuant to Rules 26, 33, 34, and 45 of the South Carolina Rules of Civil Procedure:

(1) Based on the agreement of Defendant's legal counsel that Plaintiff or his counsel may directly contact the individuals appearing on the two (2) page document produced by Defendant on January 31, 2018, Plaintiff withdraws the Motion to Compel Discovery as it relates to the identification of the individuals appearing within that document;

(2) The Defendant is required to provide Plaintiff a verified interrogatory response that provides the legal name, last known address, last known telephone number, email address, and last known business affiliation and position for Brian Neal, Ela Casuga, and Andy Johnson.

(3) To the extent that there is any responsive information, the Defendant is required to provide Plaintiff a verified interrogatory response that provides the legal name, last known address, last known telephone number, email address, and last known business affiliation and position who hired, trained, and supervised those persons that were bartending or acting in a security capacity during the second shift of June 5, 2015; and if no responsive information exists, then the Defendant shall so indicate through a verified interrogatory response to Plaintiff;

(4) The Defendant is required to produce to Plaintiff a complete response to Plaintiff's First Set of Requests for Production #11, #12, #15, and #34, found at Exhibit 7 Motion to Compel Discovery, which seek employment files and employment records.

(5) the Defendant is required to produce to the Plaintiff the detailed customer checks in its possession, custody or control for the second shift of June 5, 2015;

(6) the Defendant is required to produce to the Plaintiff its Restaurant Sales Reports, Server Sales Detail Reports, Product Mix Reports, and Audit Reports for the second shifts of May 21, 2015 – May 24, 2015; May 28, 2015-May 31, 2015; June 4-7, 2015; and any issues regarding the

exclusion or limitation of the Defendant's evidence or argument due to the limited nature of this production is preserved for the trial judge;

(7) the Defendant is required to produce the detailed customer checks that reflect alcohol sales from the second shift of June 5, 2015 showing the items purchased by patrons within the Wild Wing Café.

(8) Each subpoena previously issued by the Plaintiff to Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC; requires a response as modified in part herein, pursuant to Exhibit A attached to this Order, to the full extent that the information has not already been provided by the Defendant in discovery.

It is, therefore, ORDERED, that the Defendant, Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC, shall have twenty (20) days from the date of this order to produce the materials identified and required by this order.

AND IT IS SO ORDERED.

March ____, 2018

The Honorable DeAndrea G. Benjamin
Fifth Judicial Circuit Judge

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

EXHIBIT "A" TO ORDER:

**AMENDED
SUBPOENA IN A CIVIL CASE**

**TO: AETIUS COMPANIES, LLC; AETIUS FRANCHISING, LLC; AETIUS
RESTAURANT GROUP, LLC; AETIUS RESTAURANT HOLDINGS, LLC:**

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

PLACE: 1901 Main Street, Suite 1200
Columbia, SC 29201

DATE AND TIME: Pursuant to Court
Order

DEFINITIONS OF TERMS USED IN THIS SUBPOENA

A. The term "you" refers to Aetius Companies, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Companies, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term “document” is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term “document” includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term “document” also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term “document” is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that “relates to,” is “related to” or is “relating to” any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase “possession, custody or control” means a “document” in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term “communication” is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase “witness statement” is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term “agreement” is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

DOCUMENTS SOUGHT IN THIS SUBPOENA

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
 - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
 - a. employee hiring;
 - b. staffing ratios/requirements;
 - c. employee supervision;
 - d. music events (such as the Event);
 - e. marketing of music events;
 - f. marketing of alcohol sales;
 - g. employee training;
 - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
 - i. avoiding service of alcohol to intoxicated patrons;
 - j. the provision of security for patrons during music events (such as the Event);
 - k. safety policies and the prevention of personal injury on the Premises during operations;
 - l. the investigation, documentation, or reporting of personal injury on the Premises;
 - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
7. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
8. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
9. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
 - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
 - b. Brent Weston, believed to be at the premises on the night of the Incident;
 - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
 - d. Aaron Miller, believed to be at the premises on the night of the Incident;
 - e. Jeff Miller, believed to be at the premises on the night of the Incident;
 - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
 - g. Ricky Young, a performer who participated in the Event;
 - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
 - i. Richard A. Finan, the Plaintiff in this action
 - j. Amber Finan, who as at the premises on the night of the Incident;
 - k. Chris Seiple, who was at the premises on the night of the Incident;
 - l. Stephanie Seiple, who was at the premises on the night of the Incident;
 - m. Joni Williamson, who was at the premises on the night of the Incident;
 - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
 - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
 - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;
 - q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
 - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
 - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
 - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
 - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;

- v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
 - w. Any other person known to you to be, or believed by you to be, involved in the Incident.
- 10. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
- 11. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
- 12. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
- 13. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
- 14. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
 - a. The Wild Wing Staff;
 - b. Brent Weston;
 - c. Aaron Miller;
 - d. Jeff Miller;
 - e. Colby Wielkie;
 - f. Ricky Young;
 - g. Amber Finan;
 - h. Chris Seiple;
 - i. Stephanie Seiple, who was at the premises on the night of the Incident;
 - j. Joni Williamson;
 - k. Any person known to you to be, or believed by you to be, involved in the Incident.

Exhibit 20
Motion to Reconsider

From: Shaun C. Blake
To: "Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)"; "Ryan C. Holt"
Cc: "William H. Yarborough"; Jenkins Mann; Wes Jackson; Tyler Koester
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018
Date: Thursday, May 24, 2018 11:38:00 AM
Attachments: FINAN vs VISTA, 2018 Hearing Transcript.pdf

Ms. Burns,

We have received the hearing transcript. I have attached for your review and copied all parties.

Highest professional regards,

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

Main: (803) 256-1268
 Direct: (803) 978-1965
 Cell: (803) 834-9335
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 1901 Main Street, Suite 1200
 Columbia, SC 29201

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CIRCULAR 230 NOTICE: To comply with requirements imposed by the United States Treasury Department, any information regarding any U.S. federal tax matters contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, as advice for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed therein

From: Shaun C. Blake
Sent: Wednesday, March 28, 2018 12:44 PM
To: 'Benjamin, DeAndrea G. Law Clerk (Jasmine Burns)' <dbenjaminlc@sccourts.org>; Ryan C. Holt <RCH@swblaw.com>
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Ms. Burns,

My office requested a copy of the transcript approximately a week ago, and I will forward it to you as soon as it is received.

Highest professional regards,

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

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From: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) [<mailto:dbenjaminlc@sccourts.org>]
Sent: Wednesday, March 28, 2018 7:33 AM
To: Shaun C. Blake <sblake@rogerslewis.com>; Ryan C. Holt <RCH@swblaw.com>
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Thank you. Can someone order the transcript and send it to me? I think it is best to review the transcript and the proposed order together.

Thank you,

Jasmine Burns, Esq.
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org

dbenjaminlc@sccourts.org

From: Shaun C. Blake [<mailto:sblake@rogerslewis.com>]
Sent: Tuesday, March 27, 2018 2:34 PM
To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; Ryan C. Holt <RCH@swblaw.com>
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Ms. Burns,

Thank you for your email. The parties have conferred and are not in agreement regarding the form of the Order in two (2) respects. First, Vista Wings, LLC, contends that the inclusion of paragraph 6 is not proper because the issue of the detailed customer checks/receipts was "not raised and ruled upon." As stated previously, Plaintiff contends he clearly raised the issue of the detailed customer checks/receipts for sales during the second shift of the night of the attack was raised in the Motion (p. 13-15), and the issue requires a ruling in this Order. Second, Vista Wings, LLC contends that the phrase "copying or printing" should not appear in paragraph 7 because it excludes Wild Wing from being able to seek payment for labor expenses, and Plaintiff continues to contend that Vista Wings have failed to produce any proper matters for consideration, e.g. an affidavit, to establish either the cost or relative burden to justify requiring the companies' labor costs to be borne by an individual Plaintiff.

Please let us know if you have any further questions or if the court requires further input or a hearing from the parties on these issues.

With highest professional regards,

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

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Cell: (803) 834-9335
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From: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) [<mailto:dbenjaminlc@sccourts.org>]
Sent: Tuesday, March 27, 2018 12:05 PM
To: Shaun C. Blake <sblake@rogerslewis.com>; Ryan C. Holt <RCH@swblaw.com>
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

In addition, please confer with one another and send one email letting me know.

Thank you,

Jasmine Burns, Esq.
 Law Clerk to the Honorable DeAndrea Gist Benjamin
 Richland County Judicial Center
 P.O. Box 192
 1701 Main Street, Suite 215
 Columbia, SC 29201
 Phone: 803-576-1511
 Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Shaun C. Blake [<mailto:sblake@rogerslewis.com>]
Sent: Wednesday, March 21, 2018 10:45 AM
To: Ryan C. Holt <RCH@swblaw.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; Benjamin, DeAndrea G. <dbenjaminj@sccourts.org>
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Good morning Judge Benjamin,

I have attached a revised Order adding a sentence to paragraph 7 to reflect the statement you made during the hearing regarding the subpoenaed parties submitting an invoice for copying or printing costs.

With highest professional regards,

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

Main: (803) 256-1268
Direct: (803) 978-1965
Cell: (803) 834-9335
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, SC 29201

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From: Ryan C. Holt [<mailto:RCH@swblaw.com>]
Sent: Wednesday, March 21, 2018 9:47 AM
To: Shaun C. Blake <sblake@rogerslewis.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; dbenjaminj@sccourts.org
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: Re: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Your Honor,

Mr. Blake was kind enough to remind me that your ruling on the bill for document searching was limited to the subpoena recipients. I have no reason to dispute that.

Should the Court expand its rulings to require reprinting of the second shift receipts, I simply ask that those costs be reimbursed as well.

Respectfully submitted,

Ryan Holt, Esq.
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Sent from my iPhone

On Mar 21, 2018, at 7:01 AM, Ryan C. Holt <RCH@swblaw.com> wrote:

Good morning Judge Benjamin,

Without the benefit of the hearing transcript, I recall Your Honor specifically stating that we could send the Plaintiff a bill for having to pull the bevy of records that have been requested. We simply ask that Your Honor's ruling on the payment of these reasonable costs be included in the final written order.

Thank you.



Ryan C. Holt | *Member*
Sweeny, Wingate & Barrow, P.A.

From: Shaun C. Blake [<mailto:sblake@rogerslewis.com>]
Sent: Tuesday, March 20, 2018 7:09 PM
To: Ryan C. Holt <RCH@swblaw.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; dbenjaminj@sccourts.org
Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>
Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Dear Judge Benjamin,

In response:

(1) Paragraph 5 was unintentionally included, it is broader than paragraph 7 and duplicative. In response to correspondence with Vista Wings about the draft Order prior to sending it to you, Plaintiff further limited the Order from the request he made in the motion to compel, as can be seen in what is now paragraph 6 in the attached revised order, which also deletes the redundant paragraph.

(2) Customer checks and receipts have been requested as a part of alcohol sales

records sought in Plaintiff's discovery, most recently in Plaintiff's Fourth Request for Production #3, which is found at **Exhibit 14** of the Motion to Compel. The motion further attaches numerous exhibits whereby the Plaintiff's broader requests for production regarding alcohol sales were limited to (a) the comparative summary reports discussed in the motion and at the hearing and (b) the detailed receipts for second shift on the night at issue. E.g., Plaintiff's letter dated June 1, 2017 at **Exhibit 12** and the email exchange between the parties at **Exhibit 25** to the Motion to Compel. Vista Wings has repeatedly acknowledged that Plaintiff is seeking detailed receipts for June 5, 2015 through his discovery, e.g. **Exhibit 23, p. 1**. In Exhibit 23, Vista Wings' mistakenly states that it had already provided all of the receipts for all of the purchases on June 5, 2015, a mistake is mirrored in Vista Wing's response to Plaintiff's Fourth Request for Production #3, which is found at **Exhibit 18** of the Motion to Compel. The Point of Sale System has the details regarding the individual customer alcohol sales on June 5, 2015, that the box of credit card authorizations Vista Wings did produce does not contain. Plaintiff simply seeks an order finally requiring Vista Wings, LLC, to produce something less than what Plaintiff understood was agreed to be produced nearly nine (9) months ago, namely, the available documentation showing the individual alcohol sales data during the second shift of June 5, 2015. This information is readily available to Vista Wings, LLC, for production *en masse* by a few clicks within its Point of Sale system (**Exhibit 32** to the Motion to Compel).

(3) Vista Wings has failed to present any evidence or good cause, by affidavit or otherwise, of any cost or burden associated with Plaintiff's request, either in its brief in opposition to the motion, at the hearing, or in its email below. Vista Wings has also failed to explain why, given the disparity in resources between Vista Wings and Mr. Finan, the undisclosed cost of a roll of paper should be shifted to Mr. Finan. Moreover, the statement of counsel below that the request requires Vista Wings, LLC to "print each individual receipt on POS roll paper" is not consistent with the information available at **Exhibit 33** to the Motion to Compel, which details the common "export" function within the POS System that allows records to be export to Microsoft Excel, which would save Vista Wings, LLC from incurring the cost of some portion of a roll of paper. Moreover, while the court reporter has not issued the deposition transcript, the parties did depose Vista Wings' General Manager's (Brian Neal) last Tuesday. When I asked him whether these records had to be printed or could be exported to avoid printing, he did not confirm that the only way to produce these checks were through printing them - he had never looked into the export function detailed in the materials Plaintiff provided in support of the Motion to Compel Discovery.

(4) The issue was plainly raised for the court in detail in the motion, see **Motion to Compel Discovery, pp. 13-15**, and it was raised again in oral argument. Plaintiff understood that the only limitation that the court ordered regarding the production of alcohol sales records (asides from the limitations Plaintiff voluntarily agreed to prior to the hearing) was that production of summary records sought for comparative purposes would be limited to Thursday-Sunday for the weekend of the concert event at issue occurred and the prior two (2) Thursday-Sunday periods. Therefore, Plaintiff contends

that the order is appropriate and necessary so that Plaintiff can obtain the records and conduct the necessary depositions to prepare this case for trial.

Thank you for indulging the parties and for this exchange with you.

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

Main: (803) 256-1268
Direct: (803) 978-1965
Cell: (803) 834-9335
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, SC 29201

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From: Ryan C. Holt [<mailto:RCH@swblaw.com>]

Sent: Tuesday, March 20, 2018 5:13 PM

To: Shaun C. Blake <sblake@rogerslewis.com>; Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>; dbenjaminj@sccourts.org

Cc: William H. Yarborough <WHY@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>

Subject: RE: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Your Honor,

Thank you again for hearing us earlier this month. We believe the order comports with the Court's oral orders at the hearing with the exception of Paragraphs 5 and 7. We do not recall these issues being raised to or ruled on by the Court, nor were these items specifically requested during discovery. (The only receipts requested were those of the parties to the lawsuit and individuals sitting along the "back wall".) We are willing to provide the individual customer receipts for the night of the incident (although aggregate data has already been provided to date) as long as Plaintiff agrees to pay for

the cost of this reproduction, which requires us to print each individual receipt on POS roll paper.

Respectfully submitted,

S·W·B

Ryan C. Holt | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

T ■ 803-256-2233
D ■ 803-227-3538
F ■ 803-256-9177
[Web](#) | [Bio](#) | [Email](#)

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From: Shaun C. Blake [<mailto:sblake@rogerslewis.com>]

Sent: Tuesday, March 20, 2018 4:56 PM

To: Benjamin, DeAndrea G. Law Clerk (Jasmine Burns) <dbenjaminlc@sccourts.org>;
dbenjaminj@sccourts.org

Cc: William H. Yarborough <WHY@swblaw.com>; Ryan C. Holt <RCH@swblaw.com>;
Jenkins Mann <jmann@rogerslewis.com>; Wes Jackson <wjackson@rogerslewis.com>;
Tyler Koester <tkoester@rogerslewis.com>

Subject: Proposed Order - 2016-CP-40-07109 - Hearing on March 2, 2018

Dear Judge Benjamin,

Following up on our hearing dated March 2, 2018 in the above-referenced matter and your instructions, attached please find a proposed order for your consideration resolving the three (3) motions you heard on that day. I have previously presented the order to opposing counsel, and I have attempted to make such changes to it to the extent agreeable upon prior to submitting it for your review and execution. It is attached in Word format in the event you need to make any changes. If I can be of any further assistance in completing this order for execution, please let me know.

With highest professional regards,

Shaun C. Blake, Esq.
Member

ROGERS LEWIS
ATTORNEYS AT LAW

Main: (803) 256-1268
Direct: (803) 978-1965
Cell: (803) 834-9335
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, SC 29201

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**Exhibit 21**  
**Motion to Reconsider**

|                                    |   |                                    |
|------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS       |
|                                    | ) |                                    |
| COUNTY OF RICHLAND                 | ) | THE FIFTH JUDICIAL CIRCUIT         |
|                                    | ) |                                    |
| Richard A. Finan                   | ) | Civil Action No.: 2016-CP-40-07109 |
|                                    | ) |                                    |
|                                    | ) |                                    |
| Plaintiff,                         | ) |                                    |
|                                    | ) |                                    |
| v.                                 | ) |                                    |
|                                    | ) | DEFENDANT VISTA WINGS, LLC DBA     |
| Vista Wings, LLC dba Wild Wings    | ) | WILD WING CAFÉ'S ANSWERS TO        |
| Cafe - Columbia, Brent Weston, and | ) | PLAINTIFF'S THIRD INTERROGATORIES  |
| Aaron Miller                       | ) |                                    |
|                                    | ) |                                    |
| Defendants.                        | ) |                                    |

TO: JENKINS M. MANN, ESQUIRE AND SHAUN C. BLAKE, ESQUIRE,  
ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-  
NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute the Defendant Vista Wings, LLC d/b/a Wild Wing Café's Answers to Third Interrogatories propounded by the Plaintiff.

These Answers are continuing in nature and additional information will be supplied as obtained.

7. Identify the persons (other than its counsel of record in this action) that Wild Wings has had assist in the response to discovery, verify its Interrogatory responses, or act as a Rule 30(b)(6) designee on its behalf, including but not limited to Brian Neal, Ela Casuga, and Andy Johnson.

**ANSWER:** Plaintiff is already in possession of this information to the extent this Interrogatory seeks information regarding assistance in responding to discovery. Furthermore, the Interrogatory verification is signed. Defendant has not yet designated a

Rule 30(b)(6) because it has never received a final topics list or actual notice of Rule 30(b)(6) deposition.

**SUPPLEMENTAL ANSWER:**

Brian Neal  
212 Chestnut Oak Lane  
West Columbia, SC 29169

Ela Casuga  
205 Regency Executive Park Dr.  
Suite 204  
Charlotte, NC 28217  
843-216-7601

Andy Johnson  
205 Regency Executive Park Dr.  
Suite 204  
Charlotte, NC 28217  
843-216-7601

Santanna Griffin  
1477 Pine St.  
West Columbia, SC 29172

11. Describe in detail the contractual or ownership relationship between Wild wing and Aetius Companies, LLC.

**ANSWER:** Defendant objects to this Interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and, therefore, outside the scope of Rule 26.

**SUPPLEMENTAL ANSWER:** The Vista Wild Wing location is wholly owned by Aetius Restaurant Group, LLC.

13. For each of the 14 days prior to and following June 5, 2015, identify any other concert or live music event at the Wild Wing.

**ANSWER:** Defendant objects to this Interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and, therefore, outside the scope of Rule 26.

**SUPPLEMENTAL ANSWER:** See WWC 002875 through 002876.

15. For each of the 14 days prior to and following June 5, 2015, and including June 5, 2015, state the total number of alcoholic beverages wild Wings sold during the second shift and the dollar values of those alcohol sales.

**ANSWER:** Defendant objects to this Interrogatory as overly broad in time and scope and not reasonably calculated to lead to the discovery of admissible evidence and, therefore, outside the scope of Rule 26. Defendant has already provided this information for the night of the incident.

**SUPPLEMENTAL ANSWER:** In line with the Court's ruling, Defendant is producing reports that include this information. However, Defendant's produced reports do not provide a "count" of the alcoholic beverages sold. Instead, the reports provide the total dollar amount of beverages sold. The Audit Reports include a by-item accounting of everything ordered. See WWC 001433 through 002778, WWC 002877 through 003389.

16. For each of the 14 days prior to and following June 5, 2015, and including June 5, 2015, state the total number of alcoholic beverages Wild Wings sold during the second shift and the dollar values of those alcohol sales.

**ANSWER:** See Answer to Interrogatory Number 15 above.

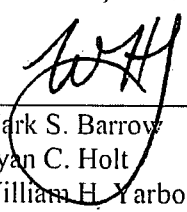
**SUPPLEMENTAL ANSWER:** See Answer to Interrogatory Number 15 above.

***\*\*Signature Page to Follow\*\****



Respectfully submitted,

**SWEENY, WINGATE & BARROW, P.A.**



---

Mark S. Barrow  
Ryan C. Holt  
William H. Yarborough, Jr.  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR DEFENDANT WILD  
WING CAFE**

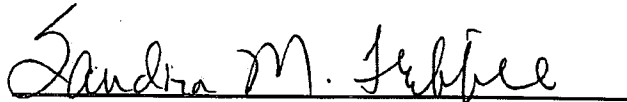
Columbia, South Carolina

July 9, 2018

**CERTIFICATE OF SERVICE**

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Answers to Plaintiff's Third Interrogatories in connection with the above-referenced case via hand to the following address:

Jenkins M. Mann, Esquire  
Shaun C. Blake, Esquire  
Rogers Lewis Attorneys at Law  
1901 Main Street, Suite 1200  
P.O. Box 11803 (29211)  
Columbia, SC 29201  
*Attorney for Plaintiff Richard A. Finan*

  
Sandra M. Tribble

Columbia, South Carolina

July 9, 2018

|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS           |
|                                    | ) |                                        |
| COUNTY OF RICHLAND                 | ) | THE FIFTH JUDICIAL CIRCUIT             |
| <br>Richard A. Finan               | ) | <br>Civil Action No.: 2016-CP-40-07109 |
|                                    | ) |                                        |
|                                    | ) |                                        |
| Plaintiff,                         | ) |                                        |
|                                    | ) |                                        |
| v.                                 | ) | DEFENDANT VISTA WINGS, LLC DBA         |
|                                    | ) | WILD WINGS CAFÉ'S RESPONSES TO         |
| Vista Wings, LLC dba Wild Wings    | ) | PLAINTIFF'S REQUESTS FOR               |
| Cafe - Columbia, Brent Weston, and | ) | PRODUCTION                             |
| Aaron Miller                       | ) |                                        |
|                                    | ) |                                        |
| Defendants.                        | ) |                                        |

**TO: JENKINS MANN, ESQUIRE, AND SHAUN BLAKE, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC d/b/a Wild Wing Café's Response to Request for Production propounded by Plaintiff.

These responses are continuing in nature and additional information will be supplied as obtained.

11. All documents related to the hiring, retention or supervision of each person hired, retained, supervised or otherwise engaged, by you or any third party, to perform security or bartending work on the premises.

**ANSWER:** Defendant objects on the basis that this Request is overly broad in time and scope. Subject to and without waiving any objections, Defendant will produce bartender personnel files upon entry of a confidentiality order in this case. A draft Confidentiality order is being submitted with these Responses.

**SUPPLEMENTAL ANSWER:** Defendant's employees are trained by shadowing other employees. Defendant does not record which employees are shadowed in the training process. All documents sought are those constituting the employees' Personnel Files.

12. All documents relating to any background checks, reference checks or other employment screens you performed, for persons hired, retained, supervised or otherwise engaged by you or any third party, to perform work at the premises on the night of June 5, 2015.

**ANSWER:** Defendant objects on the basis that this Request is overly broad in time and scope. Subject to and without waiving any objections, Defendant will produce bartender personnel files upon entry of a confidentiality order in this case. A draft Confidentiality order is being submitted with these Responses.

**SUPPLEMENTAL ANSWER:** See Personnel Files, WWC 000325 through 001432.

15. Any employee handbook provided to your bartenders, servers, and/or security personnel.

**ANSWER:** See WWC 000155 through 000282.

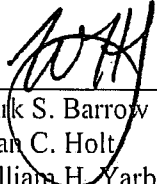
34. All documents that show or relates to the compensation, including salaries, bonuses, incentive pay, and benefits paid to you or your employees, officers, and directors.

**ANSWER:** Defendant objects to this Interrogatory on the basis that it is overly broad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Appropriate financial information will be provided consistent with Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).

**SUPPLEMENTAL ANSWER:** In line with the Court's ruling at Plaintiff's Motion to Compel, Defendant is providing personnel records pursuant to Court's Order. These documents contain the compensation information. See WWC WWC 000325 through 001432.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

Mark S. Barrow  
Ryan C. Holt  
William H. Yarborough, Jr.  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR DEFENDANTS**

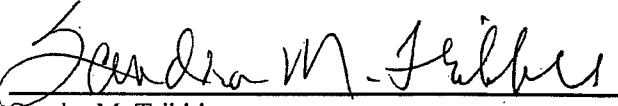
Columbia, South Carolina

July 9, 2018

**CERTIFICATE OF SERVICE**

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Responses to Requests for Production in connection with the above-referenced case via hand delivery to the following address:

Jenkins M. Mann, Esquire  
Shaun C. Blake, Esquire  
Colton Driver, Esquire  
Rogers Lewis Jackson Mann & Quinn, LLC  
1330 Lady Street, Suite 400  
Post Office Box 11803  
Columbia, South Carolina 29211  
*Attorney for Plaintiff Richard A. Finan*

  
Sandra M. Tribble

Columbia, South Carolina

March 8, 2017

|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS           |
|                                    | ) |                                        |
| COUNTY OF RICHLAND                 | ) | THE FIFTH JUDICIAL CIRCUIT             |
| <br>Richard A. Finan               | ) | <br>Civil Action No.: 2016-CP-40-07109 |
|                                    | ) |                                        |
|                                    | ) |                                        |
| Plaintiff,                         | ) |                                        |
|                                    | ) |                                        |
| v.                                 | ) | DEFENDANT VISTA WINGS, LLC DBA         |
|                                    | ) | WILD WINGS CAFÉ'S RESPONSES TO         |
| Vista Wings, LLC dba Wild Wings    | ) | PLAINTIFF'S FOURTH REQUESTS FOR        |
| Cafe - Columbia, Brent Weston, and | ) | PRODUCTION                             |
| Aaron Miller                       | ) |                                        |
|                                    | ) |                                        |
| Defendants.                        | ) |                                        |

**TO: JENKINS M. MANN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF ABOVE-NAMED:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Vista Wings, LLC d/b/a Wild Wing Café's Response to Fourth Request for Production propounded by Plaintiff.

These responses are continuing in nature and additional information will be supplied as obtained.

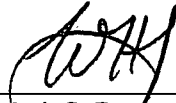
3. All DOCUMENTS showing alcohol sales revenues for the PREMISES for the month of June, 2015.

**RESPONSE:** Defendants object to this Interrogatory as overly broad in time and scope. Alcohol sales revenues for nights leading up to the incident or after the incident are not reasonably calculated to lead to the discovery of admissible evidence. Defendants have already produced for inspection and copying receipts for the night of the incident which include a breakdown of food and alcohol sales.

**SUPPLEMENTAL RESPONSE:** Pursuant to the Court's Order, see WWC  
001433 through 002778, WWC 002877 through 003584.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

Mark S. Barrow  
William H. Yarborough, Jr.  
Sweeney, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR DEFENDANT WILD  
WING CAFÉ**

Columbia, South Carolina

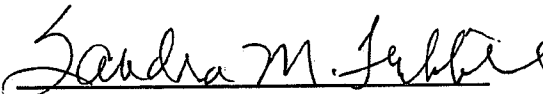
July 9, 2018



**CERTIFICATE OF SERVICE**

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Responses to Fourth Requests for Production in connection with the above-referenced case via hand delivery to the following address:

Jenkins M. Mann, Esquire  
Shaun C. Blake, Esquire  
Rogers Lewis Attorneys at Law  
1901 Main Street, Suite 1200  
P.O. Box 11803 (29211)  
Columbia, SC 29201  
*Attorney for Plaintiff Richard A. Finan*

  
Sandra M. Tribble

Columbia, South Carolina

July 9, 2018



**Exhibit 22**  
**Motion to Reconsider**

**From:** William H. Yarborough  
**To:** Shaun C. Blake  
**Cc:** Ryan C. Holt; Jenkins Mann; Tyler Koester  
**Subject:** RE: Finan v. WWC  
**Date:** Tuesday, August 7, 2018 12:47:08 PM

20<sup>th</sup> is better for them. I agree with your email below that the roster meeting on the 20<sup>th</sup> is doubtful, especially given the scheduled hearing in September. Happy to attend a status conference before hand to make sure or we can jointly write the court.

Let me know what you think, but looks like the 20<sup>th</sup> is our best bet of the two days you offered.



William H. Yarborough, Jr. | Attorney  
 Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)  
 PO Box 12129  
 Columbia, SC 29211

T ■ 803-256-2233  
 F ■ 803-256-9177  
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---

**From:** Shaun C. Blake <sblake@rogerslewis.com>  
**Sent:** Tuesday, August 07, 2018 12:41 PM  
**To:** William H. Yarborough <WHY@swblaw.com>  
**Cc:** Ryan C. Holt <RCH@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>  
**Subject:** RE: Finan v. WWC

If they are going to be in Charlotte, then I don't think that we can fit 3 in during one afternoon. It will be noon before we can get there from the courthouse in Columbia. Can those 3 be done on the 21<sup>st</sup>?

**Shaun C. Blake, Esq.**  
 Member

**ROGERS LEWIS**  
ATTORNEYS AT LAW

Main: (803) 256-1268  
 Direct: (803) 978-1965  
 Cell: (803) 834-9335  
 P.O. Box 11803 (29211)

1901 Main Street, Suite 1200  
Columbia, SC 29201

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---

**From:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Sent:** Tuesday, August 7, 2018 12:39 PM  
**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>; Tyler Koester <[tkoester@rogerslewis.com](mailto:tkoester@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Shaun,

We can do both Sharyn and Ashley the afternoon of the 20<sup>th</sup> in Charlotte in addition to Craig. Still waiting on the last two for the 21<sup>st</sup>.

Thanks,

**S·W·B**

William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.

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Columbia, SC 29211

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---

**From:** William H. Yarborough  
**Sent:** Tuesday, August 07, 2018 11:01 AM  
**To:** 'Shaun C. Blake' <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[rch@swblaw.com](mailto:rch@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>; Tyler Koester

<tkoester@rogerslewis.com>

**Subject:** RE: Finan v. WWC

Shaun,

On the 20<sup>th</sup>, we can at least get Craig Hepfner in. I'm working to see if we can squeeze in Ashley and/or Tonya as well. Let me know what time you'd like to start, but we will need to travel to him in Charlotte.

Our client does still oppose the motion to amend.

Thanks – I'll keep you posted on the remaining depositions once I hear back from everyone. Otherwise, I hope you enjoy your vacation.

**S·W·B**

William H. Yarborough, Jr. | Attorney  
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---

**From:** Shaun C. Blake <sblake@rogerslewis.com>

**Sent:** Monday, August 06, 2018 3:27 PM

**To:** William H. Yarborough <WHY@swblaw.com>

**Cc:** Ryan C. Holt <RCH@swblaw.com>; Jenkins Mann <jmann@rogerslewis.com>; Tyler Koester <tkoester@rogerslewis.com>

**Subject:** RE: Finan v. WWC

Thanks, we plan on letting the court know that there is still outstanding discovery, an outstanding order from the March motion to compel hearing, and the issue of the long outstanding motion to amend in the pre-trial questionnaire, so I doubtful that there will be any roster meeting we will be required to attend on the 20<sup>th</sup>. Even if there is one on the 20<sup>th</sup>, Judge Hood is moving through roster meetings quite fast – we could have a 10:30 start time on the 20<sup>th</sup>. As far as the motion to amend, it is finally on a motion roster in September – is your client still opposing the motion to amend? I am hoping that we can avoid further delay and/or a separate law suit by obtaining consent; it would certainly benefit all parties to have them added before additional depositions are taken in case the counsel that appears on their behalf feels the need to re-open depositions. Thanks, please just let me know.

**Shaun C. Blake, Esq.**  
Member

**ROGERS LEWIS**  
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---

**From:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>

**Sent:** Monday, August 6, 2018 1:39 PM

**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>

**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>; Tyler Koester <[tkoester@rogerslewis.com](mailto:tkoester@rogerslewis.com)>

**Subject:** RE: Finan v. WWC

I think we have the roster meeting on the 20<sup>th</sup> so I'm not sure if that date can work. I reached out to Santanna and Bradley Johnson on the 21<sup>st</sup> and haven't yet heard back – I'll reach out again and let you know if we can move forward that date.

The rest of these guys are in Charlotte, so ideally we could knock them all out the same day, schedules permitting.

**S·W·B**

William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.

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**From:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Sent:** Monday, August 06, 2018 1:33 PM  
**To:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>; Tyler Koester <[tkoester@rogerslewis.com](mailto:tkoester@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Will, just following up for scheduling before I leave town tomorrow.

Thanks,

**Shaun C. Blake, Esq.**  
 Member

**ROGERS LEWIS**  
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**From:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Sent:** Thursday, August 2, 2018 4:28 PM  
**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Hadn't seen that but thank you for the heads up. I'll reach out and see who is available on those dates and get back with y'all.





William H. Yarborough, Jr. | Attorney  
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**From:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Sent:** Thursday, August 02, 2018 4:25 PM  
**To:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Thanks Will, as you have probably seen, I have protection in the case starting next Tuesday until the following Friday for a long-scheduled family vacation. How about Monday the 20<sup>th</sup> and Tuesday the 21<sup>st</sup>?

**Shaun C. Blake, Esq.**  
Member

**ROGERS LEWIS**  
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**From:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Sent:** Thursday, August 2, 2018 4:14 PM  
**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Shaun,

Apologies for just getting to this, just getting back from depositions in Charleston. I don't think I can get any of the witnesses on such short notice, but if you provide me with some dates further out that work for you I'd be happy to try and get put it all together.

I haven't seen Judge Benjamin's Order yet, not sure if it has been signed. Your motion to amend, which my clients cannot consent to, has been scheduled for 9/6 I believe. I look forward to receiving your letter.

Thanks,



William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.

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**From:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Sent:** Wednesday, August 01, 2018 6:44 PM  
**To:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>  
**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>; Jenkins Mann <[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)>  
**Subject:** RE: Finan v. WWC

Will,

My schedule has been packed with conflicts, but I just had this Friday open up. Is anyone of these witnesses available then? I have some conflicts on Monday, but I can make that work as well if some witnesses are available. Please let me know if either works.

I am going to send you another consultation letter on the outstanding discovery issues to see if we can avoid another motion to compel. I still have not seen the court's order on the last hearing, have you? If your clients still cannot consent to the amendment to add parties, I am going to try and run down with the court what needs to be done to have that pending motion heard.

Thanks,

**Shaun C. Blake, Esq.**  
Member

**ROGERS LEWIS**  
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**From:** William H. Yarborough <[WHY@swblaw.com](mailto:WHY@swblaw.com)>

**Sent:** Monday, July 23, 2018 9:16 AM

**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>

**Cc:** Ryan C. Holt <[RCH@swblaw.com](mailto:RCH@swblaw.com)>

**Subject:** RE: Finan v. WWC

Shaun,

Good morning, hope you had a nice weekend. By way of follow up, Craig Hepfner has given us all of next week as his availability. I know that is short notice, so if you'd like, we can push out dates. Otherwise, we can make any day that works for you work.

Thanks,

William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.



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**From:** William H. Yarborough  
**Sent:** Wednesday, July 11, 2018 8:55 AM  
**To:** Shaun C. Blake <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[rch@swblaw.com](mailto:rch@swblaw.com)>  
**Subject:** RE: Finan v. WWC

Apologies for the multiple emails. In addition to those individuals, the following no longer work for WWC. I'm providing what we have as far as their last known contact info below.

Bill Richardson  
701 Darlington St  
Columbia SC 29201  
[willer803@yahoo.com](mailto:willer803@yahoo.com)  
803-960-8753

Mitch West  
7271 Harcourt  
Crossing  
Fort Mill, SC 29707  
704-557-6474

Rob Lamble  
Ear For Music  
1007 Johnnie Dodds Blvd. Suite  
130  
Mt. Pleasant, SC 29464  
[roblamble@earformusic.com](mailto:roblamble@earformusic.com)  
843-881-0039

Rob was not employed by WWC.

William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.



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**From:** William H. Yarborough  
**Sent:** Wednesday, July 11, 2018 8:51 AM  
**To:** 'Shaun C. Blake' <[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)>  
**Cc:** Ryan C. Holt <[rch@swblaw.com](mailto:rch@swblaw.com)>  
**Subject:** Finan v. WWC

Shaun,

Hope you are doing well. Trying to circle back around to this and get you dates for the individuals you wanted to depose.

Right now, Santanna Griffin and Bradley Johnson can do any days that work for you except Mondays.

Ashley Sadeghy has provided the following days:

- Friday, July 20th
- Wednesday, July 25th
- Friday, July 27th
- Friday, August 3rd

Sharyn has said she is available the second week of August but is looking for dates prior to that.

Still waiting to hear back from Craig Hepfner w/ dates.

Thanks,



William H. Yarborough, Jr. | Attorney  
Sweeny, Wingate & Barrow, P.A.

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ELECTRONICALLY FILED - 2018 Sep 13 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007109

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## **Exhibit B**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan

Plaintiff,

vs.

Vista Wings, LLC d/b/a Wild Wing Café -  
Columbia, Brent Weston and Aaron Miller

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07109

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                          |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>Colton Driver., Bar No. 102692<br>Address:<br>1330 Lady street Suite 400, Columbia, SC 29201<br>Phone: 803-256-1268 Fax _____<br>E-mail: cdriver@rogerslewis.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | <b>Defendant's Attorney:</b><br>Mark S. Barrow, Bar No. _____<br>Address:<br>1515 Lady street Columbia, SC 29201<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                          |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                          |  |
| Nature of Motion: Motion to Compel                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | Court Reporter Needed: <input checked="" type="checkbox"/> <b>YES</b> / <input type="checkbox"/> <b>NO</b>                                                               |  |
| Estimated Time Needed: 1hr                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                          |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                          |  |
| Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | March 6, 2017<br>Date submitted                                                                                                                                          |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$</b> _____<br><input type="checkbox"/> <b>EXEMPT:</b> (check reason)<br><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                                          |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                          |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | JUDGE CODE _____<br>Date: _____                                                                                                                                          |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                          |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b> _____<br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                          |  |



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

Richard A. Finan,  
Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

**PLAINTIFF'S MOTION TO COMPEL**

FILED  
2017 MAR -6 PM 12:07  
CLERK OF COURT  
RICHLAND COUNTY

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Richard A. Finan, ("Plaintiff") will move this Honorable Court for an order compelling the Defendant Vista Wings, LLC ("Wild Wing") to (1) completely answer Plaintiff's Interrogatories propounded under Rules 26 and 33, SCRPC; (2) provide all documents and responses sought under Plaintiff's Requests for Production propounded under Rules 26 and 34, SCRPC; and (3) award reasonable expenses incurred to obtain the order, including attorney's fees. A copy of the Interrogatories, Requests for Production, and Certificate of Service is attached to this motion as Exhibit A.

The authority for this motion is Rule 37(a), SCRPC, which provides, in relevant part:

**(2) Motion.** If a ... party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

\*\*\*

**(4) Award of Expenses of Motion.** If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

The specific grounds for this motion is that on December 1, 2016 Plaintiff served upon the Defendant the attached First Request for Production and Interrogatories to the Defendant. As of this date, Plaintiff has not received any written responses, objections, or documents, and the responses are past due.

Pursuant to Rule 11, SCRPC, the undersigned consulted with Defendant's counsel on February 20, 2017, prior to filing this motion, but Defendant has failed to produce any written responses or objections.

Therefore, Plaintiff respectfully requests that the Court issue an order compelling Defendant Wild Wing to (1) completely answer Plaintiff's Interrogatories propounded under Rules 26 and 33, SCRPC; (2) provide all documents and responses sought under Plaintiff's Requests for Production propounded under Rules 26 and 34, SCRPC; and (3) awarding Plaintiff its reasonable expenses incurred in obtaining the order compelling responses, including attorney's fees.

  
Colton Driver (SC Bar # 102692)  
Shaun C. Blake (SC Bar # 76349)  
Jenkins M. Mann (SC Bar #74884)  
ROGERS LEWIS JACKSON MANN & QUINN, LLC  
1330 Lady Street, Suite 400 (29201)  
P.O. Box 11803  
Columbia, SC 29211  
Tel: 803-978-2831  
Fax: 803-252-3653  
Email: cdriver@rogerslewis.com  
sblake@rogerslewis.com  
jmann@rogerslewis.com

February 24, 2017

ATTORNEYS FOR PLAINTIFF

# **Exhibit C**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4007109**

Richard A Finan

Vista Wings LLC

PLAINTIFF(S)

Wild Wing Cafe Columbia

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

*Records of local Wild Wings only. Financial records of Corporate Wild Wings are not discoverable.*

ORDER INFORMATION

This order ☐ ends ☐ does not end the case. Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below)                                                                 | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|-----------------------------------------------------------------------------------------------------------|---------------------------------------|--------------------------------|
|                                                                                                           |                                       | \$                             |
|                                                                                                           |                                       | \$                             |
|                                                                                                           |                                       | \$                             |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                       |                                |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_

Judge Code **2759**

Date **6/6/17**

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of June, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of June, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Colton Ernest Driver

Mark Steven Barrow  
John Christopher Pracht V

Ryan C. Holt

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter \_\_\_\_\_

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court Jeanelle W. McBride

# **Exhibit D**

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Richard A. Finan

Plaintiff, )

vs. )

Vista Wings, LLC d/b/a Wild Wing Café -  
Columbia, Brent Weston and Aaron Miller

Defendant. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07109

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney:

Colton Driver., Bar No. 102692

Address:

1901 Main Street Suite 1200, Columbia, SC  
29201

Phone: 803-256-1268 Fax \_\_\_\_\_

E-mail: cdriver@rogerslewis.com Other: \_\_\_\_\_

Defendant's Attorney:

Mark S. Barrow, Bar No. \_\_\_\_\_

Address:

1515 Lady street Columbia, SC 29201

Phone: \_\_\_\_\_ Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion for Rule to Show Cause

Estimated Time Needed: 1hr

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Colton Driver  
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 13, 2017

Date submitted

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: \$ \_\_\_\_\_

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

☐ Other: \_\_\_\_\_

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**PLAINTIFF'S RULE TO SHOW CAUSE  
AND MOTION TO COMPEL**

RICHLAND COUNTY  
FILED  
2017 JUL 13 AM 9:18  
JEANETTE W. JONES  
C.C.P. & G.

Plaintiff Richard A. Finan ("Finan"), by and through his attorneys, and pursuant to Rule 37(a)(2), (a)(4), and (b)(2) of the South Carolina Rules of Civil Procedure, hereby moves the Court for relief against Vista Wings ("Wild Wing") for failing to comply with the Order of this court and otherwise failing to produce discovery Wild Wing previously agreed to produce.

**GROUND FOR MOTION**

The grounds for this motion are as follows:

1. On December 1, 2016, Mr. Finan served upon Wild Wing the attached First Request for Production and Interrogatories. (Ex. 1, Motion to Compel dated March 6, 2017).
2. Pursuant to Rule 11, SCRCPP, the undersigned consulted with Wild Wing's counsel on February 20, 2017, prior to filing initial Mr. Finan's Motion to Compel, but Wild Wing failed to produce any written responses or objections until after Plaintiff filed a Motion to Compel on March 6, 2017. (Ex. 1).
3. Following the initial Motion to Compel, Wild Wing responded to certain portions of Mr. Finan's discovery requests on March 8, 2017. Wild Wing supplemented these responses on March 15, 2017. (Ex. 2, written responses of Wild Wing dated March 8, 2017 and March 15, 2017).

4. However, Wild Wing failed to produce materials or answers in response to many of the requests at any time prior to the hearing.
5. The undersigned represents to the Court that, pursuant to Rule 11, SCRCP, he engaged in negotiations with Mr. Yarborough, counsel for Wild Wing, through written correspondence and telephone calls, to resolve the discovery dispute. As a result, the parties agreed that the Defendant would provide responses to Interrogatories #16 (insofar as it resulted in any internal incident report) and #17 and Request for Production #8, #11, #18, #27, #31, and #35. Wild Wing also agreed it would have its corporate representative verify the Interrogatory responses pursuant to Rule 33(a), SCRCP, and it would produce a statement of compliance with the litigation hold letter in lieu of producing the information sought by Request for Production #27.
6. On June 6, 2017, the Court held a hearing for the Plaintiff's Motion to Compel discovery. Following the agreement between the parties outlined above, the scope of the hearing was limited to (a) Interrogatories #13, #14 and #24; and (b) Request for Production #22, #23, #24, #25, #26, and #34. Essentially, these requests sought (a) compensation and financial documents from Wild Wing, pertaining both to the location where the events prompting this litigation occurred and other locations under the same corporate umbrella as that Wild Wing location; and (b) adverse employment actions taken by Wild Wing against its employees, pertaining both to the location where the events prompting this litigation occurred and other locations under the same corporate umbrella as that Wild Wing location.
7. By Order dated June 6, 2017, the Court ordered that, while "[f]inancial records of corporate Wild Wings are not discoverable," the "[r]ecords of local Wild Wings" are discoverable. (Ex. 3, Form 4 dated June 6, 2017 and entered June 20, 2017).



8. The undersigned represents that Wild Wing has, as of the date of this motion:
- a. failed to follow the terms of the Order and produce written responses to Interrogatories #13, #14 and #24 as they relate to the Wild Wing location where the attack described in the Complaint occurred;
  - b. failed to follow the terms of the Order and produce all documents responsive to Request for Production #22, #23, #24, #25, and #26, as they relate to the Wild Wing location where the attack described in the Complaint occurred;
  - c. failed to respond to Interrogatory #16 and Request for Production #8 as required by the agreement between the parties prior to the last motion to compel hearing;
  - d. failed to provide the execution verification to the Interrogatory responses as previously agreed and required pursuant to Rule 33(a), SCRCP; and
  - e. failed to produce a statement of compliance with the litigation hold letter in lieu of producing the information sought by Request for Production #27 and as previously agreed by the parties.
9. Counsel for Mr. Finan sent a Rule 11 consultation letter to Wild Wing on June 30, 2017, regarding the need for compliance with the Court's order and the need to provide the materials per the parties' agreement; however, Wild Wing's failure to comply with the Order and the agreement between the parties regarding outstanding discovery persists.

#### **LEGAL AUTHORITY**

Rule 37 of the South Carolina Rules of Civil Procedure provides this Court with broad latitude to act as it sees fit when a party fails to obey an order to provide or permit discovery. "If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking

pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing v. Tire Service Equip. Manufacturing Co., Inc.*, 334 S.C. 193, 511 S.E.2d 716, 718-19 (Ct. App. 1999).

In response to such a failure, the Court may issue:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

Rule 37(b)(2), SCRCPP. Additionally, Rule 37, SCRCPP, provides in relevant part:

**(a)(2) Motion.** If a ... party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

\*\*\*

**(a)(4) Award of Expenses of Motion.** If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

\*\*\*

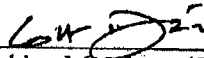
**(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper

service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

### CONCLUSION

Accordingly, the Plaintiff respectfully requests that the Court provide him all of the relief it may deem just and proper under Rule 37(a)(2), (a)(4), (b)(2), and (d) as a result of Wild Wing's failure to comply with the terms of the Order and failure to produce the discovery responses previously agreed.

Respectfully Submitted,



Jenkins M. Mann (SC Bar #74884)  
Shaun C. Blake (SC Bar # 76349)  
Colton Driver (SC Bar # 102692)  
ROGERS LEWIS JACKSON MANN & QUINN, LLC  
1901 Main Street, Suite 1200 (29201)  
P.O. Box 11803  
Columbia, SC 29211  
Tel: 803-978-2831  
Fax: 803-252-3653  
Email: jmann@rogerslewis.com  
sblake@rogerslewis.com  
cdriver@rogerslewis.com

July 12, 2017

ATTORNEYS FOR PLAINTIFF

# **Exhibit E**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan

Plaintiff,

vs.

Vista Wings, LLC dba Wild Wings Cafe - Columbia, Brent  
Weston, and Aaron Miller

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07109

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff's Attorney:  
Jenkins M. Mann, Bar No.  
1901 Main Street  
Columbia, SC 29201  
Phone: (803) 256-1268 Fax (803) 779-4749  
E-mail: [jmann@rogerslewis.com](mailto:jmann@rogerslewis.com) Other:

Defendant's Attorney:  
William H. Yarborough, Jr., Bar No. 102868  
Post Office Box 12129  
Columbia, SC 29211  
Phone: (803) 256-2233 x7102 Fax (803) 256-2233  
E-mail: [why@swblaw.com](mailto:why@swblaw.com) Other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Quash

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES/☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

November 20, 2017

Date submitted

**SECTION III: Motion Fee**

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support  
☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)  
☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
)  
) THE FIFTH JUDICIAL CIRCUIT

Richard A. Finan

) Civil Action No.: 2016-CP-40-07109  
)  
)

Plaintiff,

v.

Vista Wings, LLC dba Wild Wings  
Cafe - Columbia, Brent Weston, and  
Aaron Miller

Defendants.

MOTION TO QUASH

RICHLAND COUNTY  
FILED  
2017 NOV 27 PM 1:29  
JEANETTE W. MCBRIDE  
C.C.P. CLERK

YOU WILL PLEASE TAKE NOTICE the undersigned, as attorneys for Defendant Vista Wings, LLC dba Wild Wings Café – Columbia (“Defendant”), will move before the Presiding Judge of the Richland County Circuit Court, at the Richland Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 26, 33, 34 and 45 of the South Carolina Rules of Civil Procedure, quashing or modifying subpoenas dated November 14, 2017 to Aetius Companies, LLC, Aetius Restaurant Group, LLC, Aetius Franchising, LLC, Aetius Holdings, LLC (collectively “Aetius”). Attached as Exhibits 1, 2, 3, and 4. Furthermore,

The subpoenaed entities are, essentially, parent organizations to the Defendant. Defendant’s Motion is made for the following reasons:

- The subpoenas directly seek protected attorney-client communications (see subpoenas – Number 12(w) seeking communication between entities and “SW&B”);
- The subpoenas directly seek documents and information protected by the work product doctrine;
- The subpoenas seek extensive documentation and thereby fail to allow reasonable time for compliance and subjects Aetius to an undue burden;
- The subpoenas are aimed to harass, annoy, and subject Aetius to undue financial burden; and

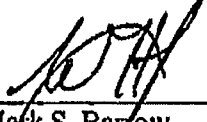
- The subpoenas represent an end run around Rules 33 and 34, SCRCP, by seeking a party's documents and information properly sought through the channels and protections afforded by formal discovery.

For the reasons set forth above, Defendant respectfully requests that this Court quash the subpoenas.

This Motion may be supported by a memorandum of law.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



---

Mark S. Barrow  
William H. Yarborough, Jr.  
Sweeney, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, SC 29211  
(803) 256-2233

**ATTORNEYS FOR WILD WING CAFE**

Columbia, South Carolina

November 20, 2017

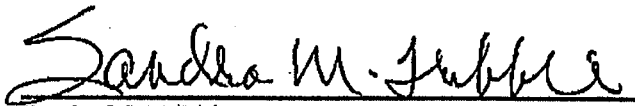
**CERTIFICATE OF SERVICE**

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendants, do hereby certify that I have served a copy of the foregoing Motion to Quash in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Jenkins M. Mann, Esquire  
Shaun C. Blake, Esquire  
Rogers Lewis Attorneys at Law  
1901 Main Street, Suite 1200  
P.O. Box 11803 (29211)  
Columbia, SC 29201  
*Attorney for Plaintiff Richard A. Finan*

J. Christopher Pracht, V, Esquire  
Thomason & Pracht, LLC  
303 East Greenville Street  
Post Office Box 4025  
Anderson, SC 29622  
cp@tandplegal.com  
*Attorney for Defendant Brent Weston*

RICHLAND COUNTY  
FILED  
2017 NOV 27 PM 1:29  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

  
Sandra M. Tribble

Columbia, South Carolina

November 20, 2017



# **Exhibit F**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07109

Richard A. Finan

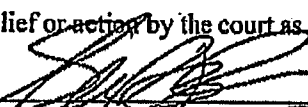
Plaintiff,

vs.

Vista Wings, LLC d/b/a Wild Wing Café -  
Columbia, Brent Weston and Aaron Miller

Defendant.

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                          |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>Shaun C. Blake, Bar No. 76349<br>Address:<br>1901 Main Street Suite 1200, Columbia, SC 29201<br>Phone: 803-256-1268 Fax _____<br>E-mail: sblake@rogerslewis.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | <b>Defendant's Attorney:</b><br>Mark S. Barrow, Bar No. _____<br>Address:<br>1515 Lady street Columbia, SC 29201<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> )<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> )<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                          |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                          |  |
| Nature of Motion: Motion to Compel<br>Estimated Time Needed: 30 Min                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                             |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><br><br>_____<br>Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | November 22, 2017<br>Date submitted                                                                                                                                      |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                          |  |
| <input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$</b><br><input type="checkbox"/> <b>EXEMPT:</b> (check reason)<br><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                                          |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | <b>CLERK'S VERIFICATION</b>                                                                                                                                              |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | JUDGE CODE _____<br>Date: _____                                                                                                                                          |  |
| Collected by: <u>MAIS</u> ✓ Date Filed: <u>11-27-17</u><br><input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b> _____<br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                          |  |

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY BY VISTA WINGS, LLC  
AND FOR APPROPRIATE RELIEF  
UNDER RULE 37, SCRPC**

**(Rule 40(a), SCRPC: "PRIORITY MATTER")**

FILED  
2017 MAR 27 PM 2:10  
CLERK OF COURT  
SOUTH CAROLINA  
C.P. & G.S.

To: Ryan C. Holt, Esq., William H. Yarborough, Esq., and Mark S. Barrow, Esq., Attorneys  
for Vista Wings, LLC:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff Richard A. Finan, ("Mr. Finan") will move this Honorable Court for an order, pursuant to Rule 37, SCRPC, that: (1) compels Vista Wings, LLC ("Vista Wings") to completely answer Plaintiff's Interrogatories propounded under Rules 26 and 33, SCRPC; (2) compels Vista Wings to provide all documents and responses sought under Plaintiff's Requests for Production propounded under Rules 26 and 34, SCRPC; and (3) provides Mr. Finan such appropriate relief under Rule 37, SCRPC, including reasonable expenses and attorneys' fees and costs, as the court may deem appropriate at this stage in the litigation. As detailed below, Mr. Finan still requires: (1) the full identification of persons with knowledge regarding the facts of this case and those who own Vista Wings, LLC; (2) the production of documents detailing Vista Wings' alcohol service during the night Mr. Finan was attacked and comparative alcohol sales figures from other nights in proximity to the concert; and (3) the production of employment records for those working during the Event.

#### Nature of the Complaint

On the night of June 5, 2015, Mr. Finan was a patron and invitee at Vista Wings' restaurant, Wild Wing Café, located on Lady Street in Columbia, South Carolina. On that evening, Vista

Wings was hosting a concert featuring the Ricky Young Band (the "Event"). According to witnesses, Mr. Finan was violently assaulted during the Event by a group of individuals who were intoxicated at the premises in violation of S.C. Code Ann. § 61-4-580 and S.C. Code Ann. § 61-6-2220. *Ex. 1, Police Report; Ex. 2, Excerpts from Deposition of Chris Seiple.* Mr. Finan has sued Vista Wing's for overserving alcohol during the Event; failing to properly provide trained security, servers, and managers during the Event; and failing to properly manage and supervise its employees and staff during the Event. As a result of Vista Wing's negligence and failure to secure its premises, Vista Wing's intoxicated patrons held Mr. Finan in a defenseless posture, strangled him to point he and others feared his death, and savagely, repeatedly beat him. *Ex. 3, Excerpts from Deposition of Joni Williamson; Ex. 4, Excerpts from Deposition of Richard Finan; Ex. 5, Photos of Richard Finan.* Therefore, Mr. Finan has filed suit against Vista Wings, bringing claims of negligence (including negligent hiring, training, retention, and supervision of employees), premises liability, and dram shop liability.

#### Legal Authority under Rule 37, SCRPC

Under Rule 37(a)(2), SCRPC, "If a ... party fails to answer an interrogatory submitted under Rule 33 [or] a request for inspection submitted under Rule 34 [then] the discovering party may move for an order compelling an answer [or] inspection in accordance with the request." If the motion is granted, the court "shall," after opportunity for hearing, "require the party whose conduct necessitated the motion ... to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Rule 37(a)(4). "[A]n evasive or incomplete answer is to be treated as a failure to answer."

Furthermore, under Rule 37(d), SCRPC, if a party fails "to serve answers or objections to

interrogatories submitted under Rule 33 [or] to serve a written response to a request for inspection submitted under Rule 34 [then] the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C)" of Rule 37(b)(2), which authorizes:

(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

"In lieu of any order or in addition thereto, the court shall require the party failing to act ... to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Rule 37(d), SCRCF. "The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c)."

#### Relevant Background to Motion

1. On December 6, 2016, together with the Complaint initiating this action, Mr. Finan served his initial written discovery under Rules 33 and 34, SCRCF, on Vista Wings. Ex. 6, *Plaintiff's First Set of Interrogatories to Vista Wings*; Ex. 7, *Plaintiff's First Set of Requests for Production to Vista Wings*; Ex. 8, *Affidavit of Service*.

2. On March 6, 2017, Mr. Finan was required to file his first Motion to Compel discovery from Vista Wings ("First Motion to Compel") because Vista Wings had failed to provide

any response to Mr. Finan's first discovery requests. The First Motion to Compel is a matter of record in this case, and it is incorporated herein by reference.

3. In response, Vista Wings provided its initial responses to Mr. Finan's first discovery requests. See *Ex. 9, Vista Wing's initial discovery responses*. Vista Wings produced the following documents:

- Three (3) typed statements purported to be made by Vista Wings employees;
- Vista Wing's liability insurance policy documentation;
- The Articles of Incorporation and Certificate of Existence for Vista Wings, Inc., a predecessor prior to conversion of Vista Wings;
- The lease, as amended, under which Vista Wings is the tenant of the premises at issue in this litigation;
- Five (5) Wild Wing policies and training procedures entitled "bar facts manual", "team member policy manual and handbook", "orientation booklet", "server training manual", and "train the server"; and
- Nineteen pages of employment records relating to five (5) Vista Wings employees, (*Ex. 10, employment records production for Alexandria Wilden Bradley A. Johnson, James Bryan, Sara Boyer, and Seth Franklin, and Bo Johnson.*)

4. Vista Wings supplemented its responses to Mr. Finan's First Set of Requests for Production on March 15, 2017. *Ex. 11, Certificate of Service for Vista Wings' Supplemental Responses to Plaintiff's Requests for Production*. Vista Wings provided redacted records on file with the Secretary of State, including a redacted copy of the document whereby Vista Wings, Inc., converted to Vista Wings, LLC.

5. On June 21, 2017, and following a hearing on the First Motion to Compel, this

Court issued a Form 4 Order requiring Vista Wings to produce records to Mr. Finan relating to the Wild Wing Café location where the event occurred. This Order is a matter of record in this case, and it is incorporated herein by reference.

6. Prior to the hearing on the First Motion to Compel, Vista Wings stated it was going to provide Mr. Finan (1) "receipts from the night of June 5, 2015, a litigation history for 5 years of the Vista location; and the remainder of the personnel files, if any existed." *Ex. 12, Letter dated June 30, 2017, enclosing prior correspondence.* Rather than produce all responsive documents, including the detailed receipts (aka customer "checks"), Vista Wings instead made its paper records of certain credit card authorizations, employee "check-out" reports from its point of sale ("POS") system, and a report of credit card transactions available for Mr. Finan to copy.

7. On July 13, 2017, Mr. Finan filed a Rule to Show Cause and Motion to Compel ("Second Motion to Compel") regarding Vista Wing's failure to respond to Mr. Finan's First Set of Interrogatories #13, #14, #16, & #24, and his First Set of Requests for Production #22 through #27. The Second Motion to Compel is a matter of record in this case, and it is incorporated herein by reference.

8. On August 2, 2017, Mr. Finan served his Third Set of Requests for Production pursuant to Rule 34, SCRPC, on Vista Wings, seeking all documents regarding any agreement between Vista Wings and the musicians playing the concert that evening, including the Ricky Young Band. *Ex. 13, Plaintiff's Third Set of Requests for Production and Certificate of Service.*

9. On August 16, 2017, Mr. Finan served his Second Set of Interrogatories pursuant to Rule 33, SCRPC, and his Fourth Set of Requests for Production pursuant to Rule 34, SCRPC, on Vista Wings, seeking documents and ESI that show Vista Wing's alcohol sales for the month of June 2015. *Ex. 14, Plaintiff's Fourth Set of Requests for Production and Certificate of Service.*

10. On September 11, 2017, and in response to the Second Motion to Compel, Vista Wings served its Supplemental Answer to Mr. Finan's First Set of Interrogatories, its Second Supplement to Mr. Finan's Request for Production, and a belated verification of its Interrogatory responses. Ex. 15.

11. On September 21, 2017, and in response to the Second Motion to Compel, Vista Wings again served Supplemental Answers to Plaintiff's First Set of Interrogatories and First Set of Requests for Production. Ex. 16.

11. On November 1, 2017, nearly a month after another Rule 11 letter dated October 6, 2017, due to Vista Wings ignoring outstanding discovery [Ex. 17], Vista Wings served its belated answers to Mr. Finan's Second Interrogatories, Third Requests for Production, and Fourth Request for Production. Ex. 18, *Letter dated November 1, 2017 disclosing Vista Wing's responses to Plaintiff's Second Set of Interrogatories, Third Requests for Production, and Fourth Requests for Production.*

12. On November 2, 2017, Vista Wings supplemented its production of documents to include three (3) itemizes receipts ("checks"). Ex. 19, *email transmitting supplemented receipts.*

13. Since that time, undersigned counsel has attempted on several occasions, pursuant to Rule 11, SCRCF, to resolve the outstanding written discovery issues in this case so that depositions can be concluded, mediation can be conducted, and the trial of this matter can proceed. The following matters still require court intervention so that the case can proceed.

#### Analysis

A. Vista Wings has failed to provide Mr. Finan a complete identification of persons with knowledge regarding the facts of this case and/or who own Vista Wings.

1. Identification of Wild Wing Personnel working during the Event

In Interrogatory #9 of Plaintiff's First Set of Interrogatories to Vista Wings, served over



eleven (11) months ago, Mr. Finan sought a verified response providing the full name, last known address, last known telephone number, last known email address, and last known business affiliation and position of the employees, servants, and agents working at the Vista location of Wild Wing Café on June 5, 2015. To date, Mr. Finan has been able to discern the cell phone numbers for 3 (three) employees through Vista Wing's document production, but Vista Wings has otherwise provided no other contact information, including addresses, whereby any witnesses can be contacted or subpoenaed.

Counsel for Mr. Finan has repeatedly asked counsel for Vista Wings to identify which, if any, of the employees working on the night of the Event that counsel represents and for whom counsel is authorized to accept subpoenas, but counsel has not identified any specific individuals. *Ex. 20, Letter dated November 15, 2017.*

Vista Wings did not raise any objection to Interrogatory #9, and yet it has failed to provide a complete response that includes contact information in the possession, custody, and control of Vista Wings, even though Vista Wings must possess or have access to this information, e.g. for mailing tax documentation to its employees. *Ex. 9.* Mr. Finan agrees to limit this Request to only those working the "second shift" of June 5, 2015, and to exclude those working solely in the "back of the house", e.g., kitchen staff. Based on the discovery responses Vista Wings has provided so far, the responsive persons include: Sara Boyers, James Bryan, Seth Franklin, Bradley Johnson, Alexandria Wilden, Marsden Cox, Taylor Hedgepath, Nicholas Packett, Haley Bennett, Frankie Caldwell, Cera Falls, Lauren Hedrick, Bree Keisler, Ashley Lombardo, Katherine Reeves, Donald Williams, Taylor Wolfrey, Daniel DuPre, Lauren Mulligan, Beghan Paulo, Antoine Jacques, Tyler Micieli, Chadwick Palmer, Santanna Griffin, John Harper, Courtney Brown, Francis "Reid" Baxley, Chelsea Lindsey, Erica Preston, Caitlin Reid, Rashel Sandoval, and a manager named

"Matt" or "Matthew" (whose name appears in documents from the night of the Event produced by Vista Wings).

Due to Vista Wings' failure to respond to this straightforward Interrogatory for the past eleven (11) months, Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide a complete response to Interrogatory #9 (as limited above) and allows Mr. Finan an opportunity to contact and determine whether these individuals are appropriate witnesses for trial, and/or that provides Mr. Finan such relief at trial pursuant to Rule 37(b)(2), SCRCF as may be appropriate.

**2. Identification of Vista Wings' witnesses relied upon in discovery and motions**

In Standard Interrogatory #1, Mr. Finan sought a verified response identifying witnesses known to Vista Wings. Vista Wings has relied upon three (3) individuals during this litigation as persons with actual knowledge regarding the matters at issue in this litigation the information and documentation it has provided in discovery. First, on March 8, 2017, and in response to Plaintiff's First Set of Interrogatories #25, Vista Wings stated that Ela Casuga was the only person that assisted Vista Wing's counsel in responding to Mr. Finan's discovery requests. Ex. 9. Second, Vista Wings produced an affidavit executed by its General Manager, Brian Neal, on June 29, 2017, testifying about his knowledge of Vista Wing's business records relating to this action and its relationships with the other Defendants. Ex. 21, *Affidavit of Brian Neal*. Third, Vista Wings produced a sworn verification by its Chief Financial Officer, Andy Johnson, stating that he has personal knowledge whereby he could confirm that all of Vista Wing's answers to Plaintiff's First Set of Interrogatories are true. Ex. 22, *Discovery Verification* (which Vista Wings used in both Ex. 15 and Ex. 16).

Despite Vista Wing's reliance on these witnesses for gathering, providing, and swearing to

the accuracy of the evidence Vista Wings has presented in discovery, Vista Wings continues to refuse to identify these persons pursuant to Standard Interrogatory #1, which was served on Vista Wings nearly a year ago. *Ex. 21, Letter dated November 8, 2017.* Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide a complete response to Standard Interrogatory #1, including these three (3) individuals; allows Mr. Finan an opportunity to subpoena these individuals for deposition and trial; and/or that otherwise provides Mr. Finan relief at trial pursuant to Rule 37(b)(2), SCRCF.

**3. Identification of Vista Wings' Members**

In Interrogatory #8 of Plaintiff's First Set of Interrogatories to Vista Wings, Mr. Finan sought a verified response providing the full name, last known address, last known telephone number, last known email address, and last known business affiliation and position of those owning the membership interest of Vista Wings, LLC, and their percentage of ownership interest. Vista Wings continues to refuse to respond to this Interrogatory on the grounds "it is not reasonably likely to lead to the discovery of admissible evidence." Mr. Finan has made it clear, in writing to Vista Wings' counsel, that Mr. Finan requires this information if for no other reason than to know whether someone sitting in the jury pool owns, or works for an entity that owns, an interest in Vista Wings. There is no credible theory whereby a request to learn of the persons who own and control a party is not "reasonable likely to lead to the discovery of admissible evidence." Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide a complete response to Interrogatory #8 and/or that provides Mr. Finan relief pursuant to Rule 37(b)(2), SCRCF.

**4. Identification of those who hired, trained, and supervised bartenders and security personnel working during the Event and those persons' qualifications.**

In Interrogatory #15, Plaintiff asked Vista Wings to give a verified interrogatory response:

that (a) lists the individuals who hired, trained, and supervised those persons that were bartending or acting in a security capacity during the Event, and (b) describes in detail its investigation to determine those bartenders and security personnel's qualifications to perform that work. Mr. Finan intends to call to trial these trainers to discuss the break down in business practices during the Event that resulted in Mr. Finan being choked and beaten by intoxicated individuals without any intervention by Vista Wings. Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide a complete response to Interrogatory #15 and allows Mr. Finan an opportunity to contact and determine whether these individuals are appropriate witnesses for trial, and/or that provides Mr. Finan relief at trial pursuant to Rule 37(b)(2), SCRCF.

**B. Vista Wings is required to produce the employment records of the Wild Wing Personnel working during the Event.**

Through his First Set of Requests for Production, and specifically Requests #11, #12, #15, & #34, Mr. Finan has sought several types of employment records, e.g., background checks, reference checks, employment screening, policies/handbook pages, compensation information and methodology, etc. for those persons working during the Event. To date, Vista Wings, has produced only scant employment records for five (5) employees. Ex. 10. In June, this court ruled that records for the Wild Wing Café location of the Event were discoverable. Moreover, as demonstrated by Vista Wings' responses to date, Vista Wings maintains employment records in a software or online (SaaS) platform known as "Workspaces," which it licenses through PeopleMatter, that is readily accessible to Vista Wings.

Since the employment files will contain important information, including but not limited to background information about the employees, the employees' acknowledgement of their receipt and understanding of Visa Wings' Policies (including its Drug and Intoxicants Policy), any adverse employment actions taken by Vista Wings against the employees, and incentives to managers to

boost the sales of alcohol, these records are reasonably calculated to lead to the discovery of admissible evidence. Therefore, Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide a complete document production in response to his First Set of Requests for Production #11, #12, #15, & #34 and/or that otherwise provides Mr. Finan relief at trial pursuant to Rule 37(b)(2), SCRCF.

**C. Vista Wings is required to provide Mr. Finan with documents within its possession, custody, or control relating to the sale and service of alcohol on the premises.**

Through discovery Mr. Finan has sought documents from Vista Wings whereby: (a) he can demonstrate to the jury the specific volume and type of alcohol Vista Wings served its patrons and employees during the Event; and (b) provide comparative data on similar dates surrounding the concert to demonstrate Vista Wings' negligence in hosting and supervising the Event in a manner that resulted in Mr. Finan being attacked and beaten by a group of intoxicated patrons. Following a review of the paper records representing a portion of the receipts for that day, Mr. Finan served the third request in his Fourth Set of Requests for Production to Vista Wings asking for "All documents showing alcohol sales revenues for the premises for the month of June 2015." Ex. 14.

**1. Production of Comparative Sales and Product Mix Numbers for June 2015.**

Vista Wings provided a canned objection to Mr. Finan's request for alcohol sales for the month of June 2015, claiming it is overly broad in time and scope. Ex. 18. However, this Request is reasonably calculated to lead to the discovery of admissible evidence. Specifically, Mr. Finan alleges Vista Wings failed to exercise due care in hosting the Event, in part by failing to employ adequate security, failing to train its personnel for the Event, and causing excessive alcohol to be consumed during the Event. To demonstrate this allegation, Mr. Finan requires internal alcohol distribution data for the Wild Wing location at issue (e.g., alcohol distribution and sales numbers from other nights in proximity to the Event) to discuss with Vista Wings' 30(b)(6) designee the

adjustments the propriety of its decisions to not hire security for the Event considering the nature of the Event and the increased volume of alcohol sales versus those during a normal evening at Wild Wings without any concert.

Without this comparative data, Mr. Finan is unreasonably limited in his ability to demonstrate Vista Wing's negligence in hosting the Event to boost attendance and alcohol sales without making any additional provisions for the safety of its guests. On the other hand, one (1) month of alcohol sales data is reasonably limited in time and scope to establish a reliable comparative range of sales and product, as it includes three (3) other weekends plus sufficient days before and after the event to make a meaningful comparison.

Notably, Vista Wings, LLC, actually failed to object to the Requests on the grounds of hardship or expense in the production of this documentation. The reason for this is clear -- the data is readily available in Vista Wings, LLC's point of sale ("POS") system. The POS system aggregates Vista Wings' alcohol sales and provisions to customers and employees, pulling data from detailed receipts (called "checks") and categorizing it automatically by unit (the specific Wild Wings location), by date, by server, by shift, by drink count, by guest count, by check number, and by dollar value. See, e.g., Ex. 24, *Checkout Report for Cera Falls*. This information is, therefore, readily available within Vista Wings, LLC's POS system, and Vista Wings merely needs to run the appropriate function in its POS system and produce the documentation. Vista Wings, LLC, specifically tracks alcohol sales by server and by shift based on the checks entered into the POS system by its employees for its own business purposes; it just has simply chosen not to produce this documentation and data in response to discovery. Mr. Finan agrees to limit this request to (1) the detailed customer checks reflecting alcohol sales on the night of the Event, and (2) Vista Wings' summary reports or aggregated data showing alcohol served for each second shift during

the two weeks prior to the Event and the two weeks following the Event. This compromise reasonably balances Mr. Finan's needs for records with any burden Vista Wings' may contend exists.

**2. Production of checks and itemized sales receipts from the Event.**

Regarding its alcohol sales on the night at issue, Vista Wings contend that all it can be reasonably required to produced are the paper credit card authorizations and paper "checkout" reports that Mr. Finan copied from a box of paper documents Vista Wings provided its counsel. However, the "checkout" reports themselves demonstrated that Vista Wings' piecemeal production of discovery has been incomplete and is unreliable. For instance, the check-out reports demonstrated that Vista Wings failed to identify all of the servers working during the Event in response to Plaintiff's First Set of Interrogatories. Ex. 23, p. 2. Moreover, the "checkout" reports demonstrate that there are at least 273 cash transactions for which Vista Wings has not produced a corresponding receipt, check, or credit card authorization provided – including cash transactions handled by Vista Wings' employees, such as Cera Falls, that Mr. Finan believes was directly providing alcohol to persons involved in attacking him and his family.

Vista Wings' piecemeal approach to disclosing the alcohol it served during the event has proven unreliable, and uncertainty is unnecessary when Vista Wings has more complete and reliable forms of data readily available in its POS system. Vista Wings uses a POS system known as Aloha. Ex. 25, *Rule 11 consultation exchange between counsel*. It is a state of the art POS system with incredible functionality. Ex. 26, *Excerpts from NCR Aloha Table Service Point-of-Sale Report Guide, including table of contents and report overview*. Aloha allows Vista Wings to analyze its alcohol sales and produce, with the few touches of a button, Restaurant Sales Reports [Ex. 27], Sales Report Summaries [Ex. 28], Server Sales Details Reports [Ex. 29], Product Mix

Reports [Ex. 30], and a host of other reports. Aloha allows Vista Wings to also produce Audit Reports that track dozens of actions performed by Vista Wings in its provision of alcohol. Ex. 31, *Excerpts from NCR Aloha Table Service Point-of-Sale Report Guide regarding Audit Reports.*

Vista Wings claims that it would take it 189 hours, or roughly 20 minutes per guest “check,” to reprint the checks from Aloha for the patrons it served during the second shift. However, the instruction manual for the Aloha system disproves Vista Wings’ claim. Ex. 32, *excerpts from NCR Aloha Table Service Point-of-Sale Report Guide regarding reprints.* Through the Reprint Menu in Aloha, Vista Wings can sort “checks” from the Event by employee and simply select “reprint all.” Moreover, Aloha can export its data and reports to common third-party software, such as Microsoft’s Word and Excel programs, for electronic production. Ex. 33, *excerpts from NCR Aloha Table Service Point-of-Sale Report Guide regarding exports.*

The paper credit card authorizations Vista Wings has produced fail to identify whether the payment is associated with an alcohol sale at all; they do not account for “spills”, “promos,” “comps,” and “employee discounts,” or other modifications to customer or employee checks [See, e.g., Ex. 24]; and they are often misleading due to “split” checks, multiple payment sources (including cash), etc. To date, Vista Wings has produced only three (3) “checks,” but it has otherwise insisted that Mr. Finan provide it the “time,” the “last four of card used (if not paid with cash),” and the “total amount of the receipt” before providing any others. However, this request is both arbitrary and impossible. It is impossible because Vista Wings has not provided Mr. Finan with the records to even provide this information. It is arbitrary because there is no need for Mr. Finan to give this information; Vista Wings, LLC, should be able to pull “checks” - and corresponding authorizations or other receipts not already produced - based on the date, shift, server, and “check” number, and it should be able to export or print these materials *en masse*.



**3. Reports and reprinted receipts, or "checks," in Aloha should be produced**

The data regarding the service of alcohol, both on the night of the Event and in the month of June, is readily available to Vista Wings in Aloha, can be produced in the form of reports and reprinted receipts, and is necessary to:

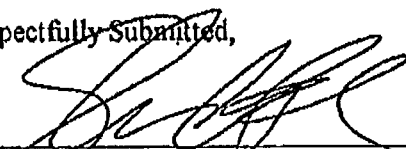
(1) allow Mr. Finan to present to the concrete information about the number and type of alcoholic beverages consumed by persons involved in or witnessing the attack of Mr. Finan [e.g. Ex. 19]; and

(2) allow Mr. Finan to present concrete information to the jury about the volume and mix of alcohol being sold during the Event and as compared to other similar nights at the Wild Wing Café when a concert event is not occurring to determine, for example, whether Vista Wings is negligent in its stated practice of never obtaining security for its concert events. *Ex. 34, Excerpt from Hearing Transcript on June 6, 2017*, pp. 10-11.

Mr. Finan agrees to limit his request for documents showing alcohol sales to (1) only those detailed checks/receipts that relate to the second shift on June 5, 2015; and (2) the "check-out" forms and such summary reports in Aloha that reflect the alcohol sales by shift during the month of June 2015, e.g. Restaurant Sales Report, Sales Report Summaries, Server Sales Details Report, Product Mix Reports, and Audit Reports discussed above. Due to Vista Wings' failure to produce documentation to date despite such records being readily available, Mr. Finan respectfully contends that he is entitled to an Order that requires Vista Wings to provide this document production and/or that otherwise provides Mr. Finan relief at trial pursuant to Rule 37(b)(2), SCRCF.

[Signature on Next Page]

Respectfully Submitted,



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November 22, 2017

ATTORNEYS FOR PLAINTIFF

# **Exhibit G**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan

Plaintiff,

vs.

Vista Wings, LLC d/b/a Wild Wing Café -  
Columbia, Brent Weston and Aaron Miller

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-07109

**MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET**

NOTED  
FILED  
CLERK  
DEC 14 AM 11:53  
JANETTE W. MORRIS  
C.C.P. & G.S.

Plaintiff's Attorney:  
Shaun C. Blake, Bar No. 76349  
Address:  
1901 Main Street Suite 1200, Columbia, SC  
29201  
Phone: 803-256-1268 Fax \_\_\_\_\_  
E-mail: sblake@rogerslewis.com Other: \_\_\_\_\_

Defendant's Attorney:  
Mark S. Barrow, Bar No. \_\_\_\_\_  
Address:  
1515 Lady street Columbia, SC 29201  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)  
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)  
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Compel Subpoena Responses

Estimated Time Needed: 1 hour

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

- ☒ Written motion attached  
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

December 13, 2017  
Date submitted

**SECTION III: Motion Fee**

☒ **PAID - AMOUNT: \$** \_\_\_\_\_

☐ **EXEMPT:**

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support  
☐ Domestic Abuse or Abuse and Neglect  
☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)  
☐ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

**JUDGE'S SECTION**

- ☐ Motion Fee to be paid upon filing of the attached order.  
☐ Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

- ☐ **MOTION FEE COLLECTED: \$** \_\_\_\_\_  
☐ **CONTESTED - AMOUNT DUE: \$** \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**PLAINTIFF'S MOTION TO COMPEL  
SUBPOENA RESPONSES AND RULE TO  
SHOW CAUSE**

**(Rule 40(a), SCRPC: "PRIORITY MATTER")**

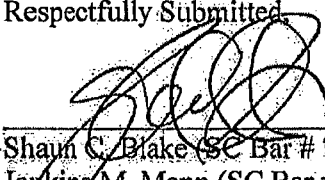
2016 DEC 16 AM 11:33  
JESSIE M. HOSCHKE  
CLERK OF COURT  
SOUTH CAROLINA  
JUDICIAL BRANCH

Plaintiff, by and through his undersigned counsel hereby moves the court for relief under Rule 45(e), SCRPC, against Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC (collectively, "Aetius"). In support of this Motion, Plaintiff asserts that Aetius was duly served the subpoenas at issue in this motion on November 14, 2017 (See Ex. A attached hereto). To date, the only response received from Aetius is at the bottom of the first page of the attached letter. (See Ex. B attached hereto). While there is a vague claim to privilege, the objection fails to provide the "description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim" as required by Rule 45(d)(2)(A), SCRPC. Moreover, while there is a claim that the records sought in the subpoena are "vast" and "duplicative," considering that none of these parties are known to operate the Wild Wings Café at issue, there is no known merit to either objection. Plaintiff has waited an additional fourteen (14) days beyond the initial time for production, and yet no production at all has been made by Aetius.

Therefore, Plaintiff respectfully prays for an order (1) compelling Aetius Companies, LLC; Aetius Franchising, LLC; Aetius Restaurant Group, LLC; and Aetius Restaurant Holdings, LLC, to fully respond to the subpoenas and (2) awarding Plaintiff the costs and attorney's fees

associated with this motion pursuant to Rule 45(e), SCRPC.

Respectfully Submitted,



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Shaun C. Blake (SC Bar # 76349)  
Jenkins M. Mann (SC Bar #74884)  
ROGERS LEWIS JACKSON MANN & QUINN, LLC  
1901 Main Street, Suite 1200 (29201)  
P.O. Box 11803  
Columbia, SC 29211  
Tel: 803-978-2831  
Fax: 803-252-3653  
Email: [jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)  
[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)

December 13, 2017

ATTORNEYS FOR PLAINTIFF

# Exhibit A

Plaintiff's Motion to Compel Subpoena Responses  
And Rule to Show Cause

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**SUBPOENA IN A CIVIL CASE**

**TO: AETIUS RESTAURANT HOLDINGS, LLC:**

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

**PLACE:** 1901 Main Street, Suite 1200  
Columbia, SC 29201

**DATE AND TIME:** November 28, 2017  
9:30 A.M.

**DEFINITIONS OF TERMS USED IN THIS SUBPOENA**

A. The term "you" refers to Aetius Restaurant Holdings, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Restaurant Holdings, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,



professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

#### **DOCUMENTS SOUGHT IN THIS SUBPOENA**

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
  - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
  - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
  - b. Brent Weston, believed to be at the premises on the night of the Incident;
  - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
  - d. Aaron Miller, believed to be at the premises on the night of the Incident;
  - e. Jeff Miller, believed to be at the premises on the night of the Incident;
  - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
  - g. Ricky Young, a performer who participated in the Event;
  - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
  - i. Richard A. Finan, the Plaintiff in this action
  - j. Amber Finan, who as at the premises on the night of the Incident;
  - k. Chris Seiple, who was at the premises on the night of the Incident;
  - l. Stephanie Seiple, who was at the premises on the night of the Incident;
  - m. Joni Williamson, who was at the premises on the night of the Incident;
  - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
  - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
  - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
  - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
  - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
  - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
  - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
  - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
  - w. SW&B, who represents Vista Wings in this Litigation; and
  - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
  - b. Brent Weston;
  - c. Aaron Miller;
  - d. Jeff Miller;
  - e. Colby Wielkie;
  - f. Ricky Young;
  - g. Amber Finan;
  - h. Chris Seiple;
  - i. Stephanie Seiple, who was at the premises on the night of the Incident;
  - j. Joni Williamson;
  - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),  
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL  
PARTIES.

  
Shaun C. Blake, Esq. (S.C. Bar # 76349)  
Jenkins M. Mann, Esq. (S.C. Bar # 74894)  
**ROGERS LEWIS JACKSON MANN & QUINN, LLC**  
1901 Main Street, Suite 1200  
Columbia, SC 29201  
Tel: (803) 256-1268  
Fax: (803) 252-3653  
Email: sblake@rogerslewis.com  
jmann@rogerslewis.com

**ATTORNEYS FOR PLAINTIFF**

November 14, 2017  
Columbia, SC

### PROOF OF SERVICE

|           |               |                                                                                                                                        |
|-----------|---------------|----------------------------------------------------------------------------------------------------------------------------------------|
| SERVED    | DATE<br>PLACE | FEES AND MILEAGE TO BE TENDERED TO WITNESS<br>UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
| SERVED ON |               | MANNER OF SERVICE                                                                                                                      |
| SERVED BY |               | TITLE                                                                                                                                  |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.  
 Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or



(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties In Responding to Subpoena.**

**(1)(A)** A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

**(B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C)** A person responding to a subpoena need not produce the same electronically stored information in more than one form.

**(D)** A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

**(2)(A)** When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**(B)** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**SUBPOENA IN A CIVIL CASE**

**TO: AETIUS FRANCHISING, LLC:**

**YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

**PLACE:** 1901 Main Street, Suite 1200  
Columbia, SC 29201

**DATE AND TIME:** November 28, 2017  
9:30 A.M.

**DEFINITIONS OF TERMS USED IN THIS SUBPOENA**

A. The term "you" refers to Aetius Franchising, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Franchising, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCP Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

#### **DOCUMENTS SOUGHT IN THIS SUBPOENA**

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
  - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

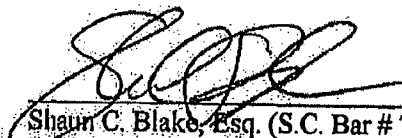
operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
  - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
  - b. Brent Weston, believed to be at the premises on the night of the Incident;
  - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
  - d. Aaron Miller, believed to be at the premises on the night of the Incident;
  - e. Jeff Miller, believed to be at the premises on the night of the Incident;
  - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
  - g. Ricky Young, a performer who participated in the Event;
  - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
  - i. Richard A. Finan, the Plaintiff in this action
  - j. Amber Finan, who as at the premises on the night of the Incident;
  - k. Chris Seiple, who was at the premises on the night of the Incident;
  - l. Stephanie Seiple, who was at the premises on the night of the Incident;
  - m. Joni Williamson, who was at the premises on the night of the Incident;
  - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
  - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
  - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
  - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
  - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
  - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
  - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
  - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
  - w. SW&B, who represents Vista Wings in this Litigation; and
  - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
  - b. Brent Weston;
  - c. Aaron Miller;
  - d. Jeff Miller;
  - e. Colby Wielkie;
  - f. Ricky Young;
  - g. Amber Finan;
  - h. Chris Seiple;
  - i. Stephanie Seiple, who was at the premises on the night of the Incident;
  - j. Joni Williamson;
  - k. Any person known to you to be, or believed by you to be, involved in the Incident.



I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),  
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL  
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)

Jenkins M. Mann, Esq. (S.C. Bar # 74894)

**ROGERS LEWIS JACKSON MANN & QUINN, LLC**

1901 Main Street, Suite 1200

Columbia, SC 29201

Tel: (803) 256-1268

Fax: (803) 252-3653

Email: [sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)

[jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)

**ATTORNEYS FOR PLAINTIFF**

November 14, 2017  
Columbia, SC

### PROOF OF SERVICE

|           |                   |                                                                                                                                        |
|-----------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| SERVED    | DATE              | FEES AND MILEAGE TO BE TENDERED TO WITNESS<br>UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|           | PLACE             |                                                                                                                                        |
| SERVED ON | MANNER OF SERVICE |                                                                                                                                        |
| SERVED BY | TITLE             |                                                                                                                                        |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.  
Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

#### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

**(1)(A)** A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

**(B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C)** A person responding to a subpoena need not produce the same electronically stored information in more than one form.

**(D)** A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

**(2)(A)** When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**(B)** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**SUBPOENA IN A CIVIL CASE**

**TO: AETIUS RESTAURANT GROUP, LLC:**

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

**PLACE:** 1901 Main Street, Suite 1200  
Columbia, SC 29201

**DATE AND TIME:** November 28, 2017  
9:30 A.M.

**DEFINITIONS OF TERMS USED IN THIS SUBPOENA**

A. The term "you" refers to Aetius Restaurant Group, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Restaurant Group, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate

to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

#### **DOCUMENTS SOUGHT IN THIS SUBPOENA**

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
  - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the



operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
  - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
  - b. Brent Weston, believed to be at the premises on the night of the Incident;
  - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
  - d. Aaron Miller, believed to be at the premises on the night of the Incident;
  - e. Jeff Miller, believed to be at the premises on the night of the Incident;
  - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
  - g. Ricky Young, a performer who participated in the Event;
  - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
  - i. Richard A. Finan, the Plaintiff in this action
  - j. Amber Finan, who as at the premises on the night of the Incident;
  - k. Chris Seiple, who was at the premises on the night of the Incident;
  - l. Stephanie Seiple, who was at the premises on the night of the Incident;
  - m. Joni Williamson, who was at the premises on the night of the Incident;
  - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
  - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
  - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
  - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
  - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
  - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
  - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
  - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
  - w. SW&B, who represents Vista Wings in this Litigation; and
  - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
  - b. Brent Weston;
  - c. Aaron Miller;
  - d. Jeff Miller;
  - e. Colby Wielkie;
  - f. Ricky Young;
  - g. Amber Finan;
  - h. Chris Seiple;
  - i. Stephanie Seiple, who was at the premises on the night of the Incident;
  - j. Joni Williamson;
  - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),  
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL  
PARTIES.



Shaun C. Blake, Esq. (S.C. Bar # 76349)  
Jenkins M. Mann, Esq. (S.C. Bar # 74894)  
**ROGERS LEWIS JACKSON MANN & QUINN, LLC**  
1901 Main Street, Suite 1200  
Columbia, SC 29201  
Tel: (803) 256-1268  
Fax: (803) 252-3653  
Email: sblake@rogerslewis.com  
jmann@rogerslewis.com

**ATTORNEYS FOR PLAINTIFF**

November 14, 2017  
Columbia, SC

### PROOF OF SERVICE

|           |                   |                                                                                                                                        |
|-----------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| SERVED    | DATE              | FEES AND MILEAGE TO BE TENDERED TO WITNESS<br>UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|           | PLACE             |                                                                                                                                        |
| SERVED ON | MANNER OF SERVICE |                                                                                                                                        |
| SERVED BY | TITLE             |                                                                                                                                        |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.  
Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

#### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**SUBPOENA IN A CIVIL CASE**

**TO: AETIUS COMPANIES, LLC:**

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects follows):

**PLACE:** 1901 Main Street, Suite 1200  
Columbia, SC 29201

**DATE AND TIME:** November 28, 2017  
9:30 A.M.

**DEFINITIONS OF TERMS USED IN THIS SUBPOENA**

A. The term "you" refers to Aetius Companies, LLC, including its officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, assigns, and subsidiaries, to the full extent that they can access records within Aetius Companies, LLC's possession, custody, or control.

B. The phrase "Axum Capital Partners" refers to Axum Capital Partners Management, LLC, a Delaware limited liability company; Axum Capital Partners, LLC, a Delaware limited liability company; and Axum Capital Fund I, LLC, a Delaware limited liability company; and each of their officers, members, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

C. The phrase "ECM Solutions" refers to Edwards, Church & Muse, Inc., a North Carolina corporation and each of its officers, shareholders, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you.

D. The term "Cincinnati Specialty" refers to the The Cincinnati Specialty Underwriters Insurance Company, a stock insurance company headquartered in Cincinnati, OH.

E. The term "SW&B" refers to Sweeny, Wingate & Barrow, P.A., a South Carolina Professional Association engaged in the business of operating a law firm, and each of its officers,

professionals, owners, directors, employees, agents, contractors, insurers, attorneys, successors, and subsidiaries who are known to you, including William G. Yarborough, Esq.; Ryan C. Holt, Esq.; Mark S. Barrow, Esq., and Sandra M. Tribble.

F. The term "Premises" refers to that Wild Wing Café location situated at 729 Lady Street, Columbia, South Carolina 29201.

G. The term "Wild Wing Staff" refers to the following persons known or believed to be working at the Premises on the night of the Incident: Bradley Johnson; Santanna Griffin; John Harper; Sara Boyer; James Bryan; Seth Franklin; Bradley Johnson; Alexandria Wilden; Marsden Cox; Taylor Hedgepath; Nicholas Packkett; Haley Bennett; Frankie Caldwell; Cera Falls; Courtney Brown; Francis "Reid" Baxley; Chelsea Lindsey; Erica Preston; Caitlin Reid; Rashel Sandoval Lauren Hedrick; Bree Keisler; Ashley Lombardo; Katherine Reeves; Donald Williams; Taylor Wolfrey; Danielle DuPre; Lauren Mulligan; Beghan Paulo; Antoine Jacques; Tyler Micieli; Chadwick Palmer; and a manager named either "Matt" or "Matthew."

H. The phrase "Vista Wings" shall mean Vista Wings, LLC, a South Carolina limited liability company, that leases the Premises for the operation of a Wild Wing thereon, as well as its parent, holding company, managers, sisters, affiliates, subsidiaries, and its/their agents, employees, contractors, representatives, or other individuals, including but not limited to the "Wild Wing Staff," who work or act on behalf of thereof, either directly or indirectly, who are known to you.

I. The term "Event" refers to the business conducted on at the Premises on June 5, 2015, which included a live musical performance by an entertainer known as Ricky Young and the music group known as the Ricky Young Band.

J. The term "Incident" refers to the service and sale of alcohol on June 5, 2015, the assault and beating of the Plaintiff, and Vista Wings and the Columbia Police Department's involvement in that beating, which occurred on the Premises on the night of June 5, 2015 and early morning hours of June 6, 2015.

K. The term "person" means a natural person, a group of natural persons acting as individuals, a group of natural persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, a partnership, a limited liability company, a joint venture, a government or governmental agency and/or any other incorporated or unincorporated business, government or social entity.

L. The term "electronically stored information" (or "ESI") is used in its broadest sense and includes any and all email and attachments, word processing documents, spreadsheets, graphics, and presentation documents, images, text files, hard drives, databases, instant messages, transaction logs, audio and video files, voicemail, Internet data, computer logs, text messages, back-up materials, "native files", writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations which are stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "ESI" also means any "documents", produced in their "native form" with "metadata" intact and shall include both "documents" that are live on a computer or server and those that are in storage

or stored either via a remote system, back-up system, hard drive or tape of any kind.

M. The term "document" is used in its broadest sense and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed, punched, transcribed, taped, produced or reproduced by any means. The term "document" includes, but is not limited to, all ESI, records, personal notes, cablegrams, telexes, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records of meetings, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, workpapers, statements, summaries, journals, billing records, and invoices. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "document" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original).

N. A document that "relates to," is "related to" or is "relating to" any given subject means any document that in whole or in part constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

O. The phrase "possession, custody or control" means a "document" in your physical custody; or, that you own in whole or in part; or, have a right by contract, statute, or otherwise to use, inspect, examine, or copy such document on any terms; or, have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or you have, as a practical matter, the ability to use, inspect, examine, or copy such document.

P. The term "communication" is used in its broadest sense and includes any oral or written conversation, expression or articulation, including all documents, correspondence, electronic transmissions, advertisements and declarations of any type.

Q. The phrase "witness statement" is to be construed broadly and is to include a written or oral statement recorded or communicated in any medium reflecting any facts related to the substance of this litigation known to any person who is identified by any person as a witness to the case or who you reasonably believe may be called as a witness by any party to this action. This definition excludes any recordings of communications occurring solely between DEFENDANTS and defense counsel made in the course and scope of an attorney-client relationship related to this action that has never been waived by any means or occurrence.

R. The term "agreement" is used in its broadest sense to include all contracts, all mutual understandings between two or more legally competent persons about their relative rights and duties regarding past or future performances, all documents that manifest a mutual assent by two or more persons to a subject, all documents that either are a part of a contract or are an exhibit to a contract, all documents when taken together create or evidence a contract between two parties, all documents that reflect or confirm an oral commitment by a party, and all documents that relate



to any sales, gifts, leases, licenses, or transfers of property or right.

S. The term "Employment Record" means all of the employment, human resource, and compensation records YOU possess relating to an employee, including but not limited to any resumes, CV's, handbooks or policies and procedures applicable to the employee during his or her employment with you, compensation records, pay stubs, time sheets or clock-in/clock-out records, state or federal tax forms, explanation of benefits, records pertaining to the provision of benefits to the employee, accommodations, promotions, write-ups, suspension records, termination records, unemployment documentation, severance records, disciplinary records, written warnings, corrective action plans, notifications of changes in compensation or benefits, bonus or incentive plans, bonus or incentive awards, written instructions to the employee, or video or audio recordings of the employee.

T. The term "personal identifying information" means that information set forth in SCRCF Rule 41.2(a).

U. The term "POS" refers to Wild Wing's point-of-sale system, or in other words, those machines, records, devices, documents, hardware, software, and/or paper records system used by to enter and retrieve Wild Wing's customer orders ("checks"), to process, print, document, track, account for, and audit Wild Wing's sales, receipts, authorizations, and payments; and used to generate Wild Wing's shift "checkout" reports.

V. The term ("AIM") system refers to Wild Wing's alcohol inventory management system" means those machines, records, devices, documents, hardware, software, and/or paper records system used to enter, track, audit, or account for, Wild Wing's beer, wine, and liquor inventory, amounts, sales, bottles, pars, pour costs, product variance, etc.

W. The terms "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the interrogatory; references to the singular include the plural, and references to the plural include the singular; and the past verb tense includes the present verb tense, and the present verb tense includes the past tense.

X. The phrase "this Litigation" refers to the lawsuit identified in the caption of this subpoena pending in Richland County, South Carolina between Richard A. Finan and Vista Wings.

#### **DOCUMENTS SOUGHT IN THIS SUBPOENA**

Please produce a true and accurate copy of the following documents to the extent that they are in your possession, custody, or control. The documents may be provided in whatever of the following forms is most cost-effective and least burdensome on you: (1) printed paper; (2) electronically as a .pdf image; (3) electronically as a .tif image; or (4) or in native electronic format, but only so long as no pay-for-license software is required to review it in native format other than Microsoft or Adobe products:

1. Those that relate to any ownership or control you had over either Vista Wings or the Premises on June 5, 2015, including but not limited to any agreements between you and either Axum Capital Partners or Vista Wings.

2. Those that relate to any indemnification agreement or obligation that exists between you and either Axum Capital Partners or Vista Wings relating to personal injuries at the premises on June 5, 2015.
3. Those that were created, modified, or were in force on June 5, 2015, that (1) relate to the terms of any franchise agreement or relationship for the Wild Wing Café operating at the Premises; or (2) establishes any rules or requirements for the franchisee at the Premises that relate to:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises; and
  - n. either insurance or indemnification for claims regarding personal injury at the Premises.
4. Those that constitute either the policies, procedures, rules, requirements, or customs that relate to any of the following conduct at the Premises from January 1, 2015 to present:
  - a. employee hiring;
  - b. staffing ratios/requirements;
  - c. employee supervision;
  - d. music events (such as the Event);
  - e. marketing of music events;
  - f. marketing of alcohol sales;
  - g. employee training;
  - h. the sale of alcohol and tracking of the volume and types of alcohol sales;
  - i. avoiding service of alcohol to intoxicated patrons;
  - j. the provision of security for patrons during music events (such as the Event);
  - k. safety policies and the prevention of personal injury on the Premises during operations;
  - l. the investigation, documentation, or reporting of personal injury on the Premises;
  - m. the preservation of evidence or materials following a report of personal injury at the Premises;
5. Any other documents comprising any agreement between you and any person, which was in force at any time between June 5, 2015, and present, and which relates to either the

operation of the Premises, the operation or maintenance of Vista Wing's POS system, the operation or maintenance of Vista Wing's POS system AIM system, or to this Litigation.

6. Those that relate to or depict the marketing materials (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) for the Event.
7. Those that relate to or depict marketing materials, (e.g., television commercials, radio commercials, flyers, web-postings, twitter posts, or other public advertisement) presented, posted, or otherwise advertised in Columbia, South Carolina between May 5, 2015 and June 5, 2015, that relate to Wild Wing Café.
8. Those that relate to or depict the contents the content of Wild Wing Café's webpages or websites as they appeared of June 5, 2015.
9. Those that
10. Those that relate to the provision of security, staff, employees, products, or other resources for the Event.
11. Those that relate to the sale, service, or consumption of alcoholic beverages at the Premises, including any documents from Vista Wing's AIM or POS systems, or other means of accounting, auditing, or tracking such data, that relate to the time periods including May 1, 2015, through June 30, 2015.
12. Those that comprising or reflecting communications between you and any of the following persons, which (1) were made or modified between January 1, 2015, and the present, and (2) relates to either the Event, the Incident, or this Litigation:
  - a. The Wild Wing Staff, who are believed to have been working on the night of the Incident;
  - b. Brent Weston, believed to be at the premises on the night of the Incident;
  - c. J. Christopher Pracht, Esq., who represents Brent Weston in this Litigation;
  - d. Aaron Miller, believed to be at the premises on the night of the Incident;
  - e. Jeff Miller, believed to be at the premises on the night of the Incident;
  - f. Colby Wielkie, believed to be at the premises on the night of the Incident;
  - g. Ricky Young, a performer who participated in the Event;
  - h. NahPro Entertainment, a talent agency believed to be affiliated with Ricky Young;
  - i. Richard A. Finan, the Plaintiff in this action
  - j. Amber Finan, who as at the premises on the night of the Incident;
  - k. Chris Seiple, who was at the premises on the night of the Incident;
  - l. Stephanie Seiple, who was at the premises on the night of the Incident;
  - m. Joni Williamson, who was at the premises on the night of the Incident;
  - n. Axum Capital Partners, who claims that Wild Wing Café is a part of its portfolio;
  - o. Brian Neal, who has held himself out as the "General Manager" of Vista Wings;
  - p. Denis Ackah-Yensu, who has held himself out as a "manager" of Vista Wings to the South Carolina Secretary of State;

- q. ECM Solutions, which has made acted as an agent of Vista Wings in connection with the Incident
  - r. Tammy Burgess, who as acted on behalf of ECM Solutions in connection with the Incident and uses the email burgess@ecmins.com
  - s. Cincinnati Specialty, who Vista Wings represents issued a policy of insurance that may provide it coverage for the Litigation;
  - t. Ela Casuga, who has participated in providing information in this Litigation on behalf of Vista Wings;
  - u. Andy Johnson, who holds himself out as the Chief Financial Officer of Vista Wings;
  - v. Mitch West, who is believed to be an employee of Aetius Companies, LLC, and who uses the email address mwest@wildwingcafe.com;
  - w. SW&B, who represents Vista Wings in this Litigation; and
  - x. Any other person known to you to be, or believed by you to be, involved in the Incident.
13. Those created during the course of any investigation or inquiry by you or Vista Wings into the Incident or this Litigation, including but not limited to those containing, reflecting, or comprising any witness statement relating to the Incident.
14. Those relating to the payment for any part of the Event, including but not limited to (1) marketing for the Event; (2) payments for any person to provide security services or to assist in ensuring the personal safety of the patrons during the event; or (3) for Ricky Young to perform at the Event.
15. Any Employment Record you have for the Wild Wing Staff. To the extent that you have any objection to providing this information due to the fact that it contains personal identifying information, you may redact the same prior to production.
16. Those that relate to or comprise any videos, pictures, or other recordings of any kind of the Premises on June 5, 2015 or the early morning of June 6, 2015.
17. Produce any videos, pictures, or other recordings of Richard A. Finan or any persons on the Premises, including but not limited to:
- a. The Wild Wing Staff;
  - b. Brent Weston;
  - c. Aaron Miller;
  - d. Jeff Miller;
  - e. Colby Wielkie;
  - f. Ricky Young;
  - g. Amber Finan;
  - h. Chris Seiple;
  - i. Stephanie Seiple, who was at the premises on the night of the Incident;
  - j. Joni Williamson;
  - k. Any person known to you to be, or believed by you to be, involved in the Incident.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1),  
AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL  
PARTIES.

  
Shaun C. Blake, Esq. (S.C. Bar # 76349)  
Jenkins M. Mann, Esq. (S.C. Bar # 74894)  
**ROGERS LEWIS JACKSON MANN & QUINN, LLC**  
1901 Main Street, Suite 1200  
Columbia, SC 29201  
Tel: (803) 256-1268  
Fax: (803) 252-3653  
Email: sblake@rogerslewis.com  
jmann@rogerslewis.com

**ATTORNEYS FOR PLAINTIFF**

November 14, 2017  
Columbia, SC

### PROOF OF SERVICE

|           |                   |                                                                                                                                        |
|-----------|-------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| SERVED    | DATE              | FEES AND MILEAGE TO BE TENDERED TO WITNESS<br>UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|           | PLACE             |                                                                                                                                        |
| SERVED ON | MANNER OF SERVICE |                                                                                                                                        |
| SERVED BY | TITLE             |                                                                                                                                        |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.  
Executed on \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

#### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

**(1)(A)** A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

**(B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C)** A person responding to a subpoena need not produce the same electronically stored information in more than one form.

**(D)** A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

**(2)(A)** When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**(B)** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.





# Exhibit B

Plaintiff's Motion to Compel Subpoena Responses  
And Rule to Show Cause



SWEENEY WINGATE & BARROW P.A.

November 15, 2017

Reply to: Main Office

William H. Yarborough, Jr.  
(803) 256-2233 x7102  
why@swblaw.com

VIA E-MAIL: [sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)

Shaun C. Blake, Esquire  
Rogers Lewis Jackson Mann & Quinn, LLC  
1901 Main St #1200  
Columbia, SC 29201

RE: Richard A. Finan v. Vista Wings, LLC d/b/a Wild Wing Cafe - Columbia, Brent  
Weston, and Aaron Miller  
Civil Action No.: 2016-CP-40-07109  
Claim No.: 2805656  
Our File: 1395-10793

Dear Shaun:

Please allow this to serve as a response to your letter dated November 10, 2017. In your letter, you state that you have amended your proposed 30(b)(6) topics. However, despite the letter stating that you had enclosed a Notice for the 30(b)(6) deposition, you did not. As I have not seen the topics you have proposed, we cannot determine the individuals that will testify to them. Please send the Notice. Additionally, you did not address my request to limit your topics to the location involved in this litigation as previously Ordered by the Court. Please respond to this Request or I will be forced to file for a Protective Order once your Notice is received.

In line with your question as to who we represent, at this time we have been retained by Cincinnati to represent Vista Wings, LLC and the Aetius companies you subpoenaed yesterday. We consider your subpoenas to (1) constitute an undue burden given the vast amount of documents required in a shorter than 2 week period, (2) be an end run around the SCRCP, (3) specifically seek communications protected by attorney client privilege and the work product doctrine, and (4) seek duplicative documentation already exchanged in discovery. As such, we will move to quash the subpoenas if they have not been withdrawn by Friday, November 17, 2017.

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211  
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

Appellants Memo 0427

Furthermore, to the extent any of the individuals you named are representatives or employees of Vista Wings or Aetius, they are represented in said role through the company.

**Vista Wings, LLC's Service of Alcohol at Wild Wings in the Vista**

You were given every physical receipt that Vista Wings has for the evening of the incident. These constitute what is kept in the ordinary course of business at Vista Wings. Cash transactions are included on the "check out" reports as are total number of alcoholic beverages purchased. Again, we have produced to you an extensive amount of receipts and have offered, repeatedly, to provide you with more itemized receipts you identify. We believe this to be more than reasonable and object to producing any further receipts, subject to our continued offer to provide *specific* receipts you identify. This objection includes producing any of the historical data you seek, which, despite your suggestion, has no evidentiary value and is, by definition, a fishing expedition.

**Vista Wings, LLC's Litigation Hold Compliance**

Your letter misstates the facts. The only letter sent or received on June 1 was from your office. Furthermore, Mr. Finan's Interrogatory asked to "IDENTIFY the date YOU received Plaintiff's litigation hold letter and the date(s) upon which YOU took actions related to such litigation hold." You have been provided with a verified response to this Interrogatory.

**Identification of Persons working on the evening of June 5, 2015**

Again, the most up to date contact information for the individuals in any way involved in this litigation is included in the personnel files already produced for the previously agreed to individuals.

**Missing Employment Record and Identification of Trainers and Supervisors**

In the June 1 letter from your office that you cite, Mr. Driver confirmed from our conversation that the personnel files I agreed to produce would include the additional tabs. Acknowledging that the letter wasn't clear, I followed up with an email to ensure there was no misunderstanding later and clarified that "we object to producing anything beyond the individuals [bartenders and door staff] we have already provided information on." Your office sent no further response and subsequently withdrew this part of the motion to compel. We followed up with the complete personnel files of these individuals and, again, received no response or objection from your office in this regard. Months later, when a second motion to compel was filed, there was no mention or discussion of personnel files. In fact, there was no mention of the personnel files again until six (6) months later (and only after the attorney my

office was mainly dealing with on this matter left). Clearly, an agreement was in place and you now seek to renegotiate.

Please note that servers and bartenders are trained by shadowing other servers and bartenders. This type of data is not tracked.

Documentation of Similar Events and Prior Notice to Wild Wing

Again, we searched our records to include a 5 year litigation history and incident reports related to other bar fights or over-service for the subject location and none were found to exist.

Improper redaction on WWC 000306 and 000307

These documents are being produced in their unredacted state.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



William H. Yarborough, Jr.

WHY

cc: J. Christopher Pracht, V, Esquire, Thomason & Pracht, LLC  
Jenkins M. Mann, Esquire, Rogers Lewis Jackson Mann & Quinn, LLC  
Enclosure

# **Exhibit H**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Richard A. Finan,

Plaintiff,

v.

Vista Wings, LLC, d/b/a Wild Wing Café-  
Columbia, Brent Weston, and Aaron Miller,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE No.: 2016-CP-40-07109

**MOTION TO AMEND COMPLAINT**

Pursuant to Rule 15, SCRCP, Plaintiff, by and through undersigned counsel, hereby moves the court for leave to file and serve an Amended Complaint substantially the same as Exhibit A attached to this motion and to alter the caption of this action to reflect the parties in this action to mirror the caption in Exhibit A. In support of this motion, the Plaintiff states as follows:

1. The Complaint has never been amended in this action.
2. On March 1, 2018, the parties executed a Stipulation of Dismissal with Prejudice regarding Defendants Brent Weston and Aaron Miller. Therefore, the Complaint needs to be amended to update the nature of the claims, in part due to the discovery during the case that Mr. Weston and Mr. Miller were not employed by Vista Wings, LLC. Additionally, the caption needs to be amended to reflect the dismissal of these parties.
3. Pursuant to Rule 15(b), SCRCP, this amendment seeks to conform the pleadings of this action to the evidence developed during the discovery of this case, including the deposition of Vista Wings, LLC's current General Manager, Brian Neal, who was deposed on March 13, 2018. Mr. Neal identified Axum Capital Partners to be his true employer and supervisor, and he disclosed significant involvement in the business operations of the Wild Wing Café in the Vista by the limited liability companies sought to be added to this action.

These facts give rise to causes of action directly and vicariously against the limited liability companies sought to be added to this action, as set forth in more detail in Exhibit A.

4. The attack of the Plaintiff occurred on June 5, 2015; therefore, there is no applicable statute of limitation that has passed. The claims against the parties sought to be added could still be otherwise filed as a stand-alone lawsuit; however, for the sake of judicial efficiency and to reduce cost and burden upon the parties, joinder of the claims to this action by way of an amendment to the Complaint is the better option.
5. The limited liability company parties sought to be added to this case have already been represented by Vista Wings, LLC's counsel in this case. By way of a motion filed on November 20, 2017, and at the hearing on that motion on March 2, 2018, that counsel has represented to the court that Aetius Restaurant Group, LLC; Aetius Restaurant Group, LLC; Aetius Franchising, LLC; and Aetius Holdings, LLC, "are, essentially, parent organizations of" Vista Wings, LLC. Therefore, these entities have already been involved in the litigation through their subsidiary and counsel, their interests have been represented, and no material prejudice arises from their addition as parties at this time.
6. Rule 15(a) states that leave to amend a pleading "shall be freely given when justice so requires." The Plaintiff has vigilantly attempted to conduct discovery in this case to learn facts, identify witnesses, identify the parent companies and owners of Vista Wings, LLC, and determine the proper parties and claims. On the hearing on March 2, 2018, Judge Benjamin indicated that she would sign an order that, amongst other relief regarding discovery sought by the Plaintiff, would require Vista Wings, LLC, to disclose those holding its membership interest. A proposed order has been forwarded to Judge Benjamin

regarding the same. While this disclosure has not occurred, this motion is brought based upon the best information known to Plaintiff at this time.

7. Plaintiff has sought the consent of Vista Wings, LLC, to this motion, but that consent has been denied.

Therefore, Plaintiff respectfully prays for an order (1) granting leave to file an Amended Complaint substantially the same as Exhibit A attached hereto and to issue Amended Summons in connection with the same; and (2) amending the caption to reflect the caption on Exhibit A attached hereto.

Respectfully Submitted,

s/ Shaun C. Blake

Shaun C. Blake (SC Bar # 76349)

Jenkins M. Mann (SC Bar #74884)

ROGERS LEWIS JACKSON MANN & QUINN, LLC

1901 Main Street, Suite 1200 (29201)

P.O. Box 11803

Columbia, SC 29211

Tel: 803-978-2831

Fax: 803-252-3653

Email: [jmann@rogerslewis.com](mailto:jmann@rogerslewis.com)

[sblake@rogerslewis.com](mailto:sblake@rogerslewis.com)

March 20, 2018

ATTORNEYS FOR PLAINTIFF



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE No.: 2016-CP-40-07109

Richard A. Finan,

Plaintiff,

**PROPOSED  
AMENDED COMPLAINT  
(Jury Trial Demanded)**

v.

Vista Wings, LLC; Axum Capital Partners, LLC; Axum Capital Partners Management, LLC; Aetius Restaurant Group, LLC; Aetius Restaurant Group, LLC; Aetius Franchising, LLC; Aetius Holdings, LLC; Craig Hepfner; and Santana Griffin;

Defendants.

Plaintiff Richard A. Finan ("Finan") hereby complains of Vista Wings, LLC; Axum Capital Partners, LLC; Axum Capital Partners Management, LLC; Aetius Companies, LLC; Aetius Restaurant Group, LLC; Aetius Franchising, LLC; and Aetius Holdings, LLC (who together own and operate the Wild Wing Café in Columbia's Vista neighborhood and are sometimes collectively referred to herein as the "limited liability company Defendants"); and Craig Hepfner ("Hepfner") and Santana Griffin ("Griffin"), each managers of that Wild Wing Café on June 5, 2015:

**JURISDICTION AND VENUE**

1. Finan is a citizen and resident of Richland County, South Carolina.
2. Griffin is a citizen and resident of Lexington County, South Carolina.
3. Hepfner is a citizen and resident of Richland County, South Carolina.
4. Vista Wings, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, maintaining a principal place of business located at 729 Lady St, Columbia, South Carolina 29201. Upon information and belief and the representations of the limited liability companies' legal counsel, Aetius Companies, LLC,

**Exhibit "A" to Plaintiff's Motion to Amend Complaint dated March 20, 2018**

Aetius Restaurant Group, LLC, Aetius Franchising, LLC, and Aetius Holdings, LLC, own the membership interest of Vista Wings, LLC. Upon information and belief, Vista Wings, LLC, had a financial interest in the Wild Wing Café located on Lady Street in Columbia's Vista neighborhood at all times relevant to this Complaint and operated it through its officers, directors, managers, employees, and agents.

5. Upon information and belief, Vista Wings, LLC, had a master/servant relationship with Griffin, Hepfner, Marsdon Cox, Taylor Hedgepath, and Nicholas Packett on June 5, 2015.

6. Upon information and belief, Aetius Companies, LLC, Aetius Restaurant Group, LLC, Aetius Franchising, LLC, and Aetius Holdings, LLC (together, the "Aetius Companies"), are limited liability companies formed in North Carolina with their principal place of business in Mecklenburg County, North Carolina. Upon information and belief, Axum Capital Partners, LLC, and Axum Capital Partners Management, LLC, either directly or indirectly hold the membership interest in the Aetius Companies; however, Plaintiff lacks knowledge of the actual members of these limited liability companies, and the citizenship of the members of the Aetius Companies remains unclear to Plaintiff. Upon information and belief, the Aetius Companies each have owned an interest in and operated the Wild Wing Café located on Lady Street in Columbia's Vista neighborhood at all times relevant to this Complaint, either directly (through its officers, directors, managers, employees, and/or agents) or indirectly (through their ownership and control of Vista Wings, LLC).

7. Upon information and belief, Axum Capital Partners, LLC, and Axum Capital Partners Management, LLC (together "Axum Capital Partners"), are also North Carolina limited liability companies with their principal place of business in Mecklenburg County, North Carolina. The members of these limited liability companies are unknown to Plaintiff. Upon information and

belief, each of these companies directly or indirectly owned an interest in and operated the Wild Wing Café located on Lady Street in Columbia's Vista neighborhood at all times relevant to this Complaint, either directly (through its officers, directors, managers, employees, and/or agents) or indirectly (through their ownership and control of Vista Wings, LLC).

8. Upon information and belief, the limited liability company Defendants identified above, acting by and through each of their members, officers, directors, employees, agents, servants, and others for whose actions each limited liability company Defendant is directly and vicariously liable, operates the Wild Wing Café located on Lady Street in Columbia's Vista ("Wild Wing Café"), employs agents and employees in Richland County, South Carolina, and/or is the holder of a permit authorizing the sale of beer, wine, liquors, and liquors by the drink by the South Carolina Department of Revenue Alcohol Beverage Licensing in Richland County, South Carolina.

9. This Court has personal jurisdiction over the parties to this action pursuant to S.C. Code Ann. § 36-2-803, and it has subject matter jurisdiction with respect to all causes stated herein pursuant to Art. V, Section 11 of the South Carolina Constitution.

10. Venue is proper in this forum under S.C. Code Ann. § 15-7-30 because (1) the one or more of the Defendants live, reside, or maintain their principal place of business in Richland County, South Carolina, and (2) the acts and omissions that are the subject of this litigation occurred in Columbia, South Carolina.

**CAUSE OF ACTION - NEGLIGENCE**

***Including: Gross Negligence, Negligence Per Se, Negligent Hiring  
Negligent Training, Negligent Supervision, Vicarious Liability and Premises Liability***

11. The Wild Wing Café located in Columbia's Vista is a "corporate" location, not a franchise location like many of the Wild Wing Cafés. There are currently approximately 15 such

“corporate” Wild Wing Cafés under the control of Axum Capital Partners and the Aetius Companies. Axum Capital Partners and the Aetius Companies acquired their interest in eleven (11) “corporate” Wild Wing Café locations in or about 2012; today, the number of “corporate” Wild Wing Café locations is approximately fifteen (15).

12. The management and personnel employed within the Wild Wing Café that work directly for Vista Wings, LLC, do not establish the Wild Wing Café policies and procedures for hiring, training, and supervision within that corporate location.

13. Rather, the Wild Wing Café’s employment policies, hiring policies, hiring requirements, certification requirements, human resource department, employee training policies, employee training materials, employee training requirements, employee training communications, employment software licensing, management hiring, management supervision, management training, and in-store supervision requirements are dictated to the personnel employed within the Wild Wing Café located in Columbia’s Vista.

14. The highest-ranking employee that actually physically works within the Wild Wing Café located in Columbia’s Vista is the position of General Manager.

15. On June 5, 2015, Hepfner was the General Manager for Wild Wing Café.

16. Hepfner directly supervised Griffin, a manager.

17. While the General Manager receives his or her paycheck from Vista Wings, LLC, the General Managers, including current General Manager, Brian Neal (“Neal”), represent and believe themselves to be employees of Wings over America, which is understood by these General Managers to be Axum Capital Partners and its affiliates and subsidiaries. These affiliates and subsidiaries include the Aetius Companies.

18. The General Manager is supervised by and directly answers to and reports to a Regional Manager. The Regional Manager's relationship to the general managers under his or her control is not a tenuous or remote one; the Regional Manager is involved in the daily operation and management of the Wild Wing Café through constant communications with the General Manager.

19. The Regional Managers are employed by Axum Capital Partners and/or its affiliates and subsidiaries, including the Aetius Companies. The Regional Managers, in turn, report directly to the Chief Operating Officer and Chief Executive Officer of Axum Capital Partners, and/or its affiliates and subsidiaries, including the Aetius Companies.

20. Through this management structure, all of the staffing, budgeting, sales targeting, product and alcohol sales promotions, advertising, event planning, training, education, employee staffing requirements, and all but the most obvious human resource issues are performed and controlled by Axum Capital Partners and/or its affiliates and subsidiaries, including the Aetius Companies.

21. Nearly every week, the Wild Wing Café hosts concerts and events.

22. The selection, scheduling, organizing, promotion, and payment for these concert events are not handled directly by Vista Wings, LLC, or the local personnel directly employed by Vista Wings, LLC.

23. Rather, Axum Capital Partners and the Aetius Companies directly employ marketing employees, event planning employees, and booking agents that are responsible for organizing and marketing the concert events that take place at the Wild Wing Café.

24. Likewise, payments for the concert events are not made directly by Vista Wings, LLC, or the other operating company Wild Wing Café. Rather, payment for concert events is

issued from Axum Capital Partners and the Aetius Companies to the General Manager in the form of a completed check so that payments can be issued to the concert events performers.

25. In 2015, Axum Capital Partners and the Aetius Companies were putting on the “Red, Hot and Rising Music Award,” a competition featuring emerging musical artists from South Carolina.

26. The Ricky Young Band, fronted by local artist Ricky Young, was one of the top four (4) musical finalists for Axum Capital Partners and the Aetius Companies’ “Red, Hot and Rising Music Award.” Axum Capital Partners and the Aetius Companies promoted this contest through e-blasts to its loyalty club members, through in-location posters, through social media, through radio advertising, and through its signature concert event, “Wing Jam”.

27. On or about March 30, 2015, Axum Capital Partners and the Aetius Companies’ representative, Simone Bruderer, notified Hepfner, as General Manager for Wild Wing Café, that Axum Capital Partners and the Aetius Companies had secured Ricky Young to play at the Wild Wing Café on June 5, 2015.

28. Simone Bruderer warned Hepfner that, because the heavy promotion for the Ricky Young Band concert event as one of its Red, Hot and Rising Music Award nominees, this was going to be a “bigger show”.

29. The General Manager and store managers of Wild Wing Café hold shift meetings with in-location staff, such as servers and bartenders, known as “ally rallies.”

30. On March 30, 2015, Axum Capital Partners and the Aetius Companies’ representative instructed Hepfner that the Defendants were to “really ... get behind” this concert event on June 5, 2015, and to be sure that managers were discussing this event with staff at the Wild Wing Café’s “alley rallies” to get servers and bartenders “excited” around the concert and

promoting it months in advance. Neal, who has worked for Wild Wing Café and its affiliates since 2008, states he has never seen such advanced promotion for a concert as the one on June 5, 2015.

31. The reason why the limited liability company Defendants identified herein put on such heavily promoted concert series, such as “Wing Jam,” and the “Red, Hot and Rising Music Award” is not to directly derive revenue and profit from the sales of concert tickets, concert merchandise, touring, or production revenues.

32. Rather, the limited liability company Defendants identified herein undertake the cost and expense of such concerts in order to boost patron attendance at their “corporate” Wild Wing Café locations and increase their sales and profits.

33. Between 30% and 70% of the all the gross revenues for the “corporate” Wild Wing Café locations are alcohol sales to patrons. The General Managers for Wild Wing Café, including Hefner and Neal, each are provided sales targets, alcohol promotion requirements, and other incentives and obligations to have their bartender and server staff promote more alcohol sales and upsell alcohol products to its patrons.

34. During concert events, and particularly “bigger” concert events, the Defendants knew and expected for the number of patrons at the Wild Wing Café and its sale of alcohol to increase significantly. The limited liability company Defendants, for example, were willing to and did provide the Ricky Young Band over \$2,100 in cash payment, food, and alcohol to achieve what it hoped would be a “bigger” increase in sales on June 5, 2015, than even a typical concert event.

35. Despite the months of wide-spread promotion and staff rallies to build up excitement around and attendance for the Ricky Young Band concert, however, none of the Defendants or their representatives took any effort at all to plan for, prepare for, or provide any

reasonable security for the patrons of Wild Wing Café during the concert event on the evening of June 5, 2015.

36. Vista Wings, LLC, has at different times made contradictory statements over whether it provided any “security” at all for the concert on June 5, 2015. The limited liability company Defendants’ representatives have stated that no true “security” was provided at Wild Wing Café on the evening of June 5, 2015. Likewise, witnesses have stated that, when the attack of the Plaintiff occurred on June 5, 2015, no security personnel was identified or visible, which extended the period of time during which Plaintiff was suffocated and assaulted at the Wild Wing Café that night.

37. In other statements, the Defendants’ representatives have contended that the doormen who are occasionally posted at various exits at the Wild Wing Café - to identify who could receive alcohol sales - were in some manner functioning as “security” for the patrons of Wild Wing Café on June 5, 2015.

38. However, the Defendants provided absolutely no training to the doormen and completely failed to ensure that any of them – Marsdon Cox, Taylor Hedgepath, or Nicholas Packett - received any real training at all on how to perform physical security and to provide a safe environment, free from assault and physical attack, for the patrons of Wild Wing Café on June 5, 2015.

39. Axum Capital Partners and the Aetius Companies undertake to create and distribute several books of policies and procedures to its employees; however, none of these policies and procedures instruct employees on how to provide for the physical security of and safety from attack by Wild Wing Café’s patrons. Likewise, none of these policies and procedures instruct shift



managers or position managers on how to staff and supervise employees to be sure that competent, adequate physical security is provided and patrons are reasonably guarded from physical attack.

40. Upon information and belief, the budget that Axum Capital Partners and the Aetius Companies had in place for Wild Wing Café on June 5, 2015, failed to account or allow for adequate security personnel to be hired and trained to provide physical security to Wild Wing Café's patrons and reasonably guard patrons from attack.

41. The limited liability company Defendants identified herein daily track the labor costs that general managers and "corporate locations" through NCR Aloha, a point of sale system that tracks sales, labor costs, and product mix. The limited liability company Defendants even essentially require their managers to download an app on their phones so that the managers can track and adjust sales, product mix, labor cost ratios, etc. anywhere and at any time.

42. Similarly, during 2015 and continuing to the present, Axum Partners and the Aetius Companies provide weekly "ranking reports" to all the "corporate" stores in order to instill a sense of competition and encourage Wild Wing Café's managers to take additional steps to increase sales and profitability in their locations. This management approach, however, directly discouraged managers from incurring additional labor costs, such as hiring, training and scheduling physical security personnel for concert events like the Ricky Young Band concert on June 5, 2015.

43. Through the financial labor cost-to-sales ratios that the limited liability company Defendants set and dictated to Hepfner and the other managers of Wild Wing Café for June 5, 2015, the limited liability company Defendants actively discouraged Hepfner, Griffin, and other managers to hire and employ adequate security personnel for the concert event on June 5, 2015.

44. The Wild Wing Café has four exits. According to Neal, both prior to and following June 5, 2015, the proper number of doormen for a shift where a concert was taking place is four

(4) doorman, representing one for each exit. Andy Johnson, the Chief Financial Officer of the limited liability company Defendants identified herein, has stated under oath that Wild Wing Cafe was staffed with only three (3) doorman were at the Wild Wing Café during the second shift of June 5, 2015, leaving the premises understaffed for the concert event.

45. On June 5, 2015, Griffin was the manager actually working the second shift at the Wild Wing Café. As the manager, she directly was responsible for and owed a duty to ensure that adequate staff was employed and supervised during that shift to provide for the physical safety of the patrons during the concert event.

46. Upon information and belief, Griffin had no prior training - from the limited liability company Defendants identified herein, Hepfner, or otherwise - on how to properly supervise or provide for the physical security of and safety from attack by the patrons of Wild Wing Café on June 5, 2015.

47. Likewise, Hepfner and Griffin failed to ensure that they had employed and staffed Wild Wing Café with even an adequate number of security employees, much less ones that were properly trained to provide physical security and ensure that patrons are reasonably guarded from physical attack while at the Wild Wing Café on June 5, 2015.

48. On the night of June 5, 2015, Mr. Finan was a patron and invitee at Wild Wing Café during the Ricky Young Band concert event. He attended with his wife and two family members.

49. The Wild Wing Café was understaffed with security personnel. While the limited liability company Defendants have stated that three (3) doormen were on duty during the second shift of June 5, 2015, the Defendants failed to:

- a. ensure that these young men had any adequate experience and training in providing physical security in a similar setting prior to hiring each of them;

- b. provide the doormen any adequate training on providing physical security prior to the concert event;
- c. have policies or procedures in place to provide for adequate physical security during the concert event;
- d. failed to have an adequately trained manager capable of properly preventing or responding to assault and physical attacks of Wild Wing Café patrons during the concert event.

50. A large group of patrons, many of whom had consumed four or more liquor beverages and who appeared to be intoxicated, were between Mr. Finan's family and the Ricky Young Band.

51. Santana failed to supervise the alcohol being consumed by this group despite having a duty to do so.

52. Santana further failed to supervise Cera Falls and the other servers and bar tenders providing alcohol sales to this group to prevent alcohol consumption to leading to an unsafe environment that would ultimately escalate into assault and physical violence.

53. During the second shift on June 5, 2015, Cera Falls sold and provided more alcoholic beverages than any other server not working behind a bar at the Wild Wing Café.

54. While Mr. Finan was speaking to a family friend, he observed that his family, including his wife, was being assaulted by a number of men from the group in front of them.

55. Santana, Marsden Cox, Taylor Hedgepath, and Nicholas Packett failed to respond to the assault of Mr. Finan's wife despite the opportunity to observe it occurring.

56. As a result of the failure of Wild Wing Café's employees and management to respond to the assault of his wife, Mr. Finan was required to place himself between her and the group of threatening, intoxicated patrons.

57. After one of the patrons began to attack Mr. Finan's brother-in-law, Mr. Finan attempted to shield his wife from physical harm due to the failure of Wild Wing Café employees and management to take any steps to provide physical security.

58. Brent Weston, a competitive mixed martial arts fighter that was with the group of intoxicated patrons, then placed Mr. Finan into a choke-hold, where he was strangled for approximately two minutes, unable to breath, break free, or even defend himself.

59. While he was being strangled, another person, who Defendants caused to be overserved alcohol in violation of S.C. Code Ann. § 61-4-580 and S.C. Code Ann. § 61-6-2220, repeatedly punched Mr. Finan in the head and the face.

60. Because Wild Wing Café failed to have any security personnel that was willing or able to intervene and assist Mr. Finan, other patron(s) attempted to come to his defense, throwing glasses and other items at Mr. Weston and pleading for him to release Mr. Finan due to the fact Mr. Finan was covered in blood and turning colors from the strangulation.

61. Even after all of the other fighting and disruption had ended, Mr. Weston continued to detain and choke Mr. Finan while he awaited for some Wild Wing Café security to come and take Mr. Finan from his choke hold.

62. However, if any Wild Wing Café employees did eventually intervene, it did not occur until after police, who were located outside and were watching a neighboring business establishment, came into the Wild Wing Café and began taking individuals outside for questioning.

63. In fact, one of the bartenders working at the upstairs bar is stated to have had to come downstairs and involve himself in some manner of removing people from the premises due to the absence of and failures of any Wild Wing Café security to pay adequate attention and timely intervene for the safety of the Plaintiff and other patrons.

64. Defendants each owed Plaintiff a duty of care as a result of:

- a. Plaintiff's status as an invitee at Wild Wing Café;
- b. Defendants' undertaking to operate Wild Wing Café for their own profit;
- c. Defendants' undertaking to hire and employ managers and staff for the second shift of June 5, 2015;
- d. Defendants' undertaking to train the managers and staff working on the second shift of June 5, 2015;
- e. Defendants' undertaking to supervise and manage the servers and bartenders working on the second shift of June 5, 2015;
- f. Defendants' undertaking to supervise and manage the doormen working on the second shift of June 5, 2015;
- g. promote and host the Ricky Young Band concert event, and provide for the care and security of Plaintiff and the other patrons;
- h. the requirements of S.C. Code Ann. § 61-4-580 and Defendants' undertaking to sell beer and wine to the public, including the patrons near Mr. Finan on June 5, 2015;
- i. the requirements of S.C. Code Ann. § 61-6-2220 and Defendants' undertaking to sell liquor and liquor by the drink to the public, including the patrons near Mr. Finan on June 5, 2015;
- j. and in such other particulars as to be shown to a trier of fact.

65. Defendants had a further a duty to vet, hire and/or retain only suitable personnel to provide, among other services, the lawful and responsible service of alcohol and the provision of physical security to its patrons for events like the Ricky Young Band concert on June 5, 2015.

66. Defendants had a further duty to train and supervise their employees, agents, managers, and/or security personnel, to provide, among other services, the lawful and responsible service of alcohol and the provision of security to their patrons for events like the Ricky Young Band concert on June 5, 2015.

67. Defendants further had a duty to exercise due care and take safety precautions to warn of or eliminate unreasonable risks within the premises, including the risks of assault, attack, and foreseeable criminal conduct.

68. Defendant Wild Wing further owed Mr. Finan a duty not to knowingly overserve other patrons or to perform alcohol sales to individuals Defendant Wild Wing knew or should have known were intoxicated.

69. Defendants while acting individually, and or through their servants, employees and others for whose actions they are directly and vicariously liable, jointly and severally, breached their duties of care in a negligent, grossly negligent and/or reckless and wanton manner, including, but not limited to, in the following particulars:

- a. In failing to exercise due care in planning for and hosting the Ricky Young Band concert at Wild Wing Café on or about June 5, 2015;
- b. In failing to provide adequate security, both in number and in qualification, at at Wild Wing Café to protect the safety of its patrons;
- c. In failing to adequately protect Mr. Finan and his family from assault by other patrons at Wild Wing Café;

- d. In failing to adequately protect Mr. Finan from physical attack while on their premises;
- e. In failing to intercede in the assaults against Mr. Finan and his family;
- f. In providing beer, wine, alcoholic liquors or liquor by the drink to intoxicated individuals and knowingly overserved intoxicated individuals in an illegal manner in violation of S.C. Code Ann. §§ 61-4-580 and 61-6-2220;
- g. In failing to properly vet, hire or retain employees, agents and/or contractors or representatives with suitable background, skill, experience and temperament to perform the job functions they were discharging on the evening of June 5, 2015, include without limitation, failure to perform criminal background checks, contact references and prior employers, or otherwise evaluate their suitability for the roles they were retained to discharge;
- h. In failing to properly train their employees, agents and/or contractors or representatives to properly discharge their essential job functions, including, without limitation, training these said individuals to:
  - i. Comply with South Carolina law;
  - ii. Identify intoxicated patrons;
  - iii. Refuse the service of alcohol to obviously or apparently intoxicated individuals;
  - iv. Safely remove intoxicated, belligerent and/or dangerous individuals from the premises;
  - v. Identify and intervene where safety risks exist to patrons;

- vi. Exercise the proper use of force in the limited circumstances where force is both necessary and appropriate; and
  - vii. Otherwise perform functions and duties its agents, employees, and/or contractors or representatives were engaged in or should have been engaged in on the evening of June 5, 2015.
- i. In failing to properly train their employees, agents and/or contractors or representatives to properly discharge their essential job functions, including, without limitation, training these said individuals to:
- i. Comply with South Carolina law;
  - ii. Identify intoxicated patrons;
  - iii. Refuse the service of alcohol to obviously or apparently intoxicated individuals;
  - iv. Safely remove intoxicated, belligerent and/or dangerous individuals from the premises;
  - v. Identify and intervene where safety risks exist to patrons;
  - vi. Exercise the proper use of force in the limited circumstances where force is both necessary and appropriate; and
  - vii. Otherwise perform functions and duties its agents, employees, and/or contractors or representatives were engaged in or should have been engaged in on the evening of June 5, 2015.
- j. In failing to properly supervise their employees, agents and/or contractors or representatives while these persons were discharging their essential job functions on the evening of June 5, 2015, including, without limitation:



- i. Adopt and enforce policies and procedures that would result in compliance with South Carolina law;
- ii. Adopt and enforce policies and procedures that would prevent the service of alcohol to obviously or apparently intoxicated individuals;
- iii. Employ sufficient supervisory staff to ensure compliance with South Carolina law, the policies and procedures of Defendants, and the standard of care owed by bars, restaurants, and event hosts in South Carolina;
- iv. Properly use and monitor point-of-sale information to track overconsumption of alcohol by patrons or employees;
- v. Failing to use state of the art equipment, such as video monitoring, to monitor the premises, the conduct of employees and patrons, and to allow sufficient notice to Griffin and other employees of harm and risks of harm to its patrons;
- vi. Adopt and enforce policies and procedures that adequately provide security for patrons from other patrons, employees, agents, or contractors of the limited liability company Defendants;
- vii. Adopt and enforce policies and procedures that would have prevented the limited liability company Defendants' employees, agents, contractors, and/or representatives from being provided alcohol at Wild Wing Café while working on the premises;
- viii. Adopt and enforce policies and procedures that limit the use of violence or force on patrons, or instruct how to properly apply it;

- ix. Adopt and enforce a plan to safely intervene where risk of harm or violence exists to patrons;
- x. Otherwise have managers, policies, procedures its agents, employees, and/or contractors or representatives were engaged in or should have been engaged in on the evening of June 5, 2015.

70. At all times relevant hereto the actions of Griffin, Hepfner, and the other employees and agents of the limited liability company Defendants occurred substantially within the authorized time and space limits of their employment and/or agency for the limited liability company Defendants.

71. At all times relevant hereto the actions of Griffin, Hepfner, and the other employees and agents of the limited liability company Defendants were actuated at least in part by a desire to serve the limited liability company Defendants and/or to further their interests.

72. The limited liability company Defendants are responsible for those negligent and grossly negligent acts performed by Griffin, Hepfner, and the other employees and agents of the limited liability company Defendants described herein above.

73. Due to the savage strangulation and beating he suffered at Wild Wings Café on June 5, 2015, Plaintiff has suffered foreseeable damages, including, but not limited to, personal injury, pain and suffering, psychological and emotional damages, medical bills, anxiety, loss of enjoyment of life, and other damages that are considerably in excess of \$100,000.00 and in amount to be proven at trial.

74. Mr. Finan sustained his injuries as the direct and proximate result of the Defendants' negligent, grossly negligent and wanton failure to discharge their duties of care, including their duties to comply with S.C. Code Ann. §§ 61-4-580 and 61-6-2220; take safety

precautions to warn of or eliminate unreasonable risks within the premises; and vet, hire, train, retain and supervise its employees, agents, contractors, and/or other personnel engaged in alcohol service, security or management.

**WHEREFORE**, Plaintiff respectfully requests a jury trial on all causes of action and for judgment against the Defendants, both jointly and severally, in a sum of actual and general damages as may be determined by the jury; punitive damages as may be determined by the jury; an award of attorney's fees and costs on the appropriate action; prejudgment and post-judgment interest as appropriate; and such other and further relief as it deems just and appropriate.

---

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March 20, 2018  
Columbia, SC

# **Exhibit I**

1 \* \* \* \* \*

2 ASHLEY COAKLEY

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. BLAKE:

6 Q. Good afternoon. Could you state your  
7 full legal name for the record, please.

8 A. Sure. It's Ashley Ariana Coakley.

9 Q. How do you spell your last name?

10 A. It's C-O-A-K-L-E-Y.

11 Q. And did you recently change your last  
12 name?

13 A. Yes. I got married two years ago --  
14 about two years ago.

15 Q. Congratulations.

16 A. Thank you.

17 Q. Okay. Has your email address changed or  
18 is it still --

19 A. No, it's still ashley@wildwingcafe.com.

20 Q. How long have you used that one?

21 A. For about six years.

22 Q. Ever given a deposition before?

23 A. No, sir.

24 Q. Okay. So briefly I'll go over the rules  
25 that our rules require us to tell you in advance.

1           Now that we've started, any questions  
2           that you have about the process, about my  
3           questions, direct those to me, unless there's a  
4           very specific situation where your attorney will  
5           jump in and we'll navigate that.

6           But just sort of the default is now that  
7           this has started, anything that you're wondering  
8           about, send my way. And if you have any problem  
9           understanding my question or if I'm using a word  
10          that's unclear and you need me to define it for  
11          you, just ask me to do so and I'll happily try to  
12          rephrase my question. Okay?

13          A.     Okay.

14          Q.     If you need to take a break for any  
15          reason, let us know.

16                 You're doing a great job of it already,  
17          but it's really easy for us to get conversational  
18          where we either talk over each other or we go  
19          uh-huh or huh-uh or we answer by physical gestures,  
20          and that makes it really difficult for our  
21          transcript to be clear.

22          A.     Okay.

23          Q.     So if you'll work on giving verbal  
24          answers that are clear --

25          A.     Sure.

1 Q. -- I'll work on trying to ask clear  
2 questions and move us through this, because the  
3 goal today is to have a clean transcript of our  
4 conversation. Okay?

5 A. Okay.

6 Q. And know that if you take a break for  
7 whatever reason you can't have any privileged  
8 conversations. I can ask about them when you come  
9 back on the record. So just be mindful of that  
10 during breaks.

11 A. Okay.

12 Q. Okay. You said you've never been deposed  
13 before. Have you ever been involved in a lawsuit  
14 before?

15 A. No.

16 Q. Okay. Have you been involved in  
17 gathering records for the use of -- in this -- of  
18 Wild Wings in this lawsuit?

19 A. Yes.

20 Q. Okay. Tell me about your role in that.

21 A. Joey Gibson asked for promotional  
22 material.

23 Q. Okay. And who's Joey Gibson?

24 A. Is our vice president of support  
25 services.

1 Q. And where did you get the promotional  
2 material?

3 A. From our drive.

4 Q. When you say "our drive" what do you  
5 mean?

6 A. Wild Wing Cafe's archive of design files.

7 Q. And where is that drive at?

8 A. We're able to access it from the home  
9 office.

10 Q. Okay. And when you say "the home  
11 office," are you referencing the corporate office  
12 here in Charlotte?

13 A. Yes.

14 Q. Okay. Is that your employer?

15 A. Yes.

16 Q. How long had you worked for them?

17 A. About nine-and-a-half years.

18 Q. Okay. So I'm going to kind of go  
19 backwards through your work history.

20 Your current position is what?

21 A. Vice president of marketing.

22 Q. And when did you obtain that title?

23 A. About two years ago.

24 Q. Who was your predecessor?

25 A. We did not have a vice president of



1 marketing before that.

2 Q. Okay.

3 A. We had a marketing director.

4 Q. Was that Simone?

5 A. Uh-huh.

6 Q. That's a "yes"?

7 A. Yes. Sorry.

8 Q. No worries. I'm not going to be rude,  
9 I'm just correcting you. Just making sure we're  
10 clear.

11 So her title was what?

12 A. Marketing director.

13 Q. Was she over marketing whenever she was  
14 the marketing director?

15 A. Yes.

16 Q. Were regional field managers subordinate  
17 to the marketing director at that time?

18 A. Yes.

19 Q. Okay. What was your title prior to  
20 becoming the VP of marketing?

21 A. I was art director.

22 Q. And from what year to what year were you  
23 art director?

24 A. 2012 to 2016.

25 Q. Okay. And what did you do as the art

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2016-CP-40-07109  
Appellate Case No. 2018-002054

Richard A. Finan, .....Appellant,

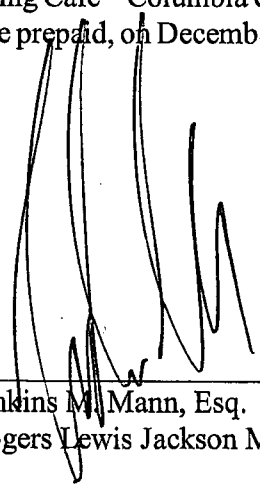
v.

Vista Wings, LLC, d/b/a Wild Wing Café – Columbia, .....Respondent.

**PROOF OF SERVICE**

I certify that served the Memorandum of Appealability requested by the Court on Respondent Vista Wings, LLC, d/b/a Wild Wing Café – Columbia causing a copy of same to be deposited in the United States mail, postage prepaid, on December 31, 2018, addressed to the following:

Mark S. Barrow, Esq.  
Ryan Holt, Esq.  
William Yarborough, Esq.  
SWEENY WINGATE & BARROW, P.A.  
1515 Lady Street  
Columbia, SC 29201

  
\_\_\_\_\_  
Jenkins M. Mann, Esq.  
Rogers Lewis Jackson Mann & Quinn, LLC

December 31, 2018

# ROGERS LEWIS

ATTORNEYS AT LAW

Christopher L. Boguski, Esq.  
Direct: (803) 978-2832  
cboguski@rogerslewis.com

December 31, 2018

**Via Hand Delivery**

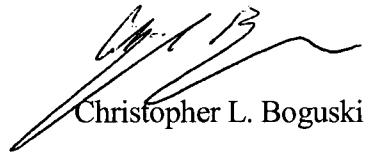
Ms. Jenny Abbott Kitchings  
Clerk of Court – South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Finan v. Vista Wings, LLC d/b/a Wilding Wing Café – Columbia, et al.  
Appellate Case No. 2018-002054

Dear Madam Clerk:

Enclosed for filing please find Appellant Richard A. Finan's Memorandum on the Issue of Appealability, with Exhibits. I have provided a copy of this Memorandum, with Exhibits, to counsel for Respondent. Please contact my office if you need any additional information.

Sincerely,



Christopher L. Boguski

cc:

Mark S. Barrow, Esq.  
Ryan Holt, Esq.  
William Yarborough, Esq.  
Sweeny Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201

**RECEIVED**  
DEC 31 2018  
SC Court of Appeals